Amoco Fabrics Co., Patchogue-Plymouth Division/Nashville Mills *and* Amalgamated Clothing & Textile Workers Union, AFL-CIO, CLC, Cases 10-CA-15752, 10-CA-16016, and 10-CA-16329

February 22, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On April 21, 1981, Administrative Law Judge William N. Cates issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs, the Charging Party filed cross-exceptions, and Respondent filed a brief in opposition to the Charging Party's cross-exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,[1] findings,[2] and conclusions[3] of theAdministrative Law Judge and to adopt his recommended Order, as modified herein.[4]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Amoco Fabrics Co., Patchogue-Plymouth Division/Nashville Mills, Nashville, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Add the following as paragraph 1(i) through (k) and reletter the present paragraph 1(i) as paragraph 1(l):

"(i) Confiscating petitions being circulated by its employees which are being circulated for any purpose that is protected by the Act.

"(j) Changing the work assignments of its employees or imposing more onerous working conditions on its employees because they have engaged in union or protected concerted activities.

"(k) Causing its employees to take leaves of absence or discharging its employees because they have engaged in union or protected concerted activities."

2. Substitute the following for paragraph 2(a):

"(a) Offer Clemenstine Hendley immediate and full reinstatement to her former burling job and provide her with the assistance of a doffer when she is temporarily performing reroll work, consistent with past practice, or, if the burling job no longer exists, offer her immediate and full reinstatement to her former reroll position, or, if those positions no longer exist, offer her immediate and full reinstatement to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges previously enjoyed, and make

[1] In adopting the Administrative Law Judge's Decision in this proceeding, we do not rely on his gratuitous comments in fn. 1 regarding the propriety of the Regional Director's actions in consolidating the cases involved herein, as the Regional Director followed the appropriate procedures.

In fn. 2 of his Decision, the Administrative Law Judge denied the General Counsel's post-hearing motion to reopen the record herein and to consolidate this proceeding with three cases involving conduct by Respondent which occurred after the hearing closed in this proceeding. While specifically declining to renew this motion before the Board, the General Counsel has excepted to the Administrative Law Judge's denial of the motion. Inasmuch as the motion is now moot and no party has been prejudiced by its denial, we affirm the Administrative Law Judge's ruling.

[2] Respondent and the General Counsel have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In par. 31, sec. III.A, of his Decision, the Administrative Law Judge stated that, "The fact Respondent may have later reviewed and lessened discipline it meted out to employee Warren does establish an unlawful motive. . . ." It appears that the Administrative Law Judge intended to state that, "The fact Respondent may have later reviewed and lessened discipline . . . does not establish an unlawful motive. . . ." We therefore correct this inadvertent error.

In adopting the Administrative Law Judge's conclusion that Respondent discharged employee Peggy Ruth Gardner because of her union and protected concerted activities, we do not rely on the conversation between Gardner and "Supervisor" Johnnie Skinner as evidence of Respondent's animus toward Gardner's protected activities. Skinner was never alleged to be a supervisor or an agent of Respondent, and no evidence was presented upon which a finding of such supervisory status could be based. This error in the Administrative Law Judge's findings does not affect his conclusions, however, inasmuch as he relied on other independent evidence of Respondent's animus toward Gardner's protected activities.

[3] The General Counsel has excepted to the Administrative Law Judge's failure to discuss whether or not the conversation between employee Elijah Bailey III and Employment Manager Gene Shearl, in which Shearl asked Bailey if he thought the Union would buy him a tackle box, constituted an unlawful interrogation as alleged. We find it unnecessary to pass on this allegation, however, since any finding of an 8(a)(1) violation would merely be cumulative and would have no effect on the remedy herein.

In adopting the Administrative Law Judge's Decision herein, we note that the legality of Respondent's written no-solicitation, no-distribution rule as set forth in fn. 17 of the Administrative Law Judge's Decision is not in issue, and therefore we do not pass on its validity. In adopting the Administrative Law Judge's conclusion that Respondent's oral no-solicitation, no-distribution rule violated Sec. 8(a)(1), Member Fanning does not rely on *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615 (1962), in which he dissented and which was cited by the Administrative Law Judge.

[4] We have modified the Administrative Law Judge's recommended Order to follow and remedy more accurately the actual violations found. We have also modified the Administrative Law Judge's notice to conform to our Order.

her whole for any loss of earnings she may have suffered as a result of Respondent's causing her to take two leaves of absence, such backpay to be computed in the manner set forth in 'The Remedy' section of this Decision."

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT coercively interrogate our employees concerning their union activities or the union activities and sentiments of their fellow employees.

WE WILL NOT threaten our employees with discharge if they join or engage in activities on behalf of the Amalgamated Clothing & Textile Workers Union, AFL-CIO, CLC, or any other labor organization.

WE WILL NOT threaten our employees that they will not be able to take grievances to their supervisors if they select the Amalgamated Clothing & Textile Workers Union, AFL-CIO, CLC, or any other union, as their collective-bargaining representative.

WE WILL NOT tell our employees that they do not have to honor subpenas issued by the National Labor Relations Board.

WE WILL NOT threaten our employees that we will close our plant if they join or engage in activities on behalf of the Amalgamated Clothing & Textile Workers Union, AFL-CIO, CLC, or any other labor organization.

WE WILL NOT maintain or enforce any rule that prohibits our employees from distributing literature in nonworking areas on nonworking time where such distribution is protected by Section 7 of the National Labor Relations Act, as amended.

WE WILL NOT maintain any rule that prohibits employees from soliciting on nonworking time where such solicitation is protected by Section 7 of the National Labor Relations Act, as amended.

WE WILL NOT confiscate petitions being circulated by our employees which are being circulated for any purpose that is protected by the National Labor Relations Act, as amended.

WE WILL NOT deny access to our plant premises to employees who are engaged in union or protected concerted activities.

WE WILL NOT change the work assignments of our employees or impose more onerous working conditions upon our employees because they have engaged in union or protected concerted activities.

WE WILL NOT cause our employees to take leaves of absence or discharge our employees because they have engaged in union or protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

WE WILL offer to Peggy Ruth Gardner immediate and full reinstatement to her former job or, if that position no longer exists, to a substantially equivalent position without prejudice to her seniority or any other rights and privileges previously enjoyed, and WE WILL make her whole for any loss of pay she may have suffered as a result of our discrimination against her, with interest.

WE WILL offer Clemenstine Hendley immediate and full reinstatement to her former burling job and provide her with the assistance of a doffer when she is (temporarily) performing reroll work, consistent with past practice, or, if the burling job no longer exists, offer her immediate and full reinstatement to her former reroll position, or, if those positions no longer exist, offer her immediate and full reinstatement to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges previously enjoyed, and WE WILL make her whole for any loss of earnings she may have suffered as a result of our causing her to take two leaves of absence, with interest.

WE WILL make Elijah Bailey III whole for any loss of earnings he may have suffered as a result of our having removed him, contrary to our past practice, from the position of substi-

tute lead operator because of his union and protected concerted activities, with interest.

AMOCO FABRICS CO., PATCHOGUE-PLYMOUTH DIVISION/NASHVILLE MILLS

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge: This matter was heard at Adel, Georgia, on November 17–20, 1980, and January 5–7, 1981. The charges were filed by Amalgamated Clothing & Textile Workers Union, AFL-CIO, CLC, herein called the Union or the Charging Party, in Case 10-CA-15752 on April 16, 1980 (amended on May 16, 1980); in Case 10-CA-16016 on July 9, 1980 (amended on August 12, 1980); in Case 10-CA-16329 on October 14, 1980. The Regional Director for Region 10 of the National Labor Relations Board, herein called the Board, issued a complaint and notice of hearing in Case 10-CA-15752 on May 30, 1980. On November 4, 1980, an amendment to the complaint in Case 10-CA-15752 was issued. A complaint and order consolidating cases and notice of hearing in Cases 10-CA-15752 and 10-CA-16016 was issued by the Regional Director for Region 10 on August 20, 1980, and, thereafter, on September 5, 1980, an amended complaint and order consolidating cases and notice of hearing issued in the same two cases. Thereafter, the Regional Director for Region 10 issued a complaint and order consolidating cases and notice of hearing in Cases 10-CA-15752, 10-CA-16016, and 10-CA-16329 on November 4, 1980. The complaint in Case 10-CA-16016 was further amended by counsel for the General Counsel on November 19, 1980. The consolidated cases[1] allege that Amoco Fabrics Co., Patchogue-Plymouth Division/Nashville Mills, herein called Respondent or Employer, violated Section 8(a)(1) of the National Labor Relations Act, as amended, herein called the Act, through various acts of interference, restraint, and coercion of its employees by its supervisors and agents; and violated Section 8(a)(3) and (1) of the Act by imposing more stringent working conditions on and subsequently suspending its employee Pat Warren; and further violated Section 8(a)(4), (3), and (1) of the Act by issuing a written warning to and thereafter discharging its employee Pat Warren; and violated Section 8(a)(3) and (1) of the Act by issuing a warning to its employee Donald Dean Tidwell; and violated Section 8(a)(4), (3), and (1) of the Act by discharging its employee Donald Dean Tidwell; and further that it violated Section 8(a)(3) and (1) of the Act by issuing written warnings to its employees Kenneth R. Locklear and Joan Foxworth, by suspending its employee James Albert White, by removing its employee Elijah Bailey III from the position of substitute lead operator, by imposing more onerous working conditions on its employee Clemenstine Hendley, by causing its employee Clemenstine Hendley to take a leave of absence, by discharging its employees Abel C. Braswell and Peggy Ruth Gardner, and by issuing a warning to and subsequently suspending its employee Rudolph Lovett.

Upon the entire record,[2] including my observation of the demeanor of the witnesses,[3] and after due considera-

[1] The Regional Director, although consolidating the various cases, did not at any point consolidate the complaints. It would appear that the procedure followed by the Regional Director in issuing multiple complaints and consolidating only the cases is technically correct. However, such a procedure makes it difficult for the parties as well as an administrative law judge to determine precisely what issues have been joined or what allegations have been admitted. Such a procedure requires an undue excessive amount of time to separate and isolate issues and to insure that each specific issue has been addressed by the parties and an administrative law judge. It would appear that a preferred method of pleading would be to have all averment of claims made in numbered paragraphs limited as far as practical to a statement of a single set of circumstances all contained in the four corners of a single document.

[2] On March 2, 1981, counsel for the General Counsel filed a motion, dated February 27, 1981, to reopen the record in Cases 10-CA-15752, 10-CA-16016, and 10-CA-16329 and consolidate therewith Cases 10-CA-16568, 10-CA-16614, and 10-CA-16682. Counsel for the General Counsel contended in its motion that the subsequent listed cases involved conduct occurring for the most part on, about, or after the hearing was scheduled in the previous cases. Counsel for the General Counsel attached to its motion a copy of an order consolidating cases and complaint and notice of hearing in Cases 10-CA-16568, 10-CA-16614, and 10-CA-16682 in which a hearing date of November 18, 1981, had been ordered by the Regional Director for Region 10 of the Board. By telegraphic notice, I caused a Show Cause Order, dated March 3, 1981, to be served on the parties with a return date of March 13, 1981. Respondent and the General Counsel responded to the Show Cause Order. Counsel for the General Counsel restated in its response essentially the same grounds it had advanced in its motion to reopen the record. Respondent contended counsel for the General Counsel's motion was "a sham in an effort to obtain a new closing date and consequently a new date for filing briefs." Respondent further contends that to reopen the record would enable counsel for the General Counsel to file a brief arguing its position in Cases 10-CA-15752, 10-CA-16016, and 10-CA-16329 when counsel for the General Counsel's brief had been previously rejected as untimely filed. Respondent further contends any such attempt by counsel for the General Counsel would be "unconscionable" and should be rejected for that reason. Respondent further contended that counsel for the General Counsel in attaching to its motion a copy of the order consolidating cases and complaint and notice of hearing in Cases 10-CA-16568, 10-CA-16614, and 10-CA-16682 was attempting nothing more than to "prejudice the Administrative Law Judge in his decision in Cases 10-CA-16329, 10-CA-16016, and 10-CA-15752," and that such conduct on the part of counsel for the General Counsel was "totally reprehensible" and should not be condoned. While it is true that counsel for the General Counsel's motion to reopen the record followed shortly after its untimely brief was rejected and returned to it, I do not consider the filing of such a motion to constitute a sham or to be reprehensible. I find it unnecessary to consider such allegations and have given them no weight in my determination to deny counsel for the General Counsel's motion. Counsel for the General Counsel's motion fails on its own merits. It would have unduly delayed the instant Decision on the allegations already heard by me to have kept the record open until the new allegations could be heard commencing on November 18, 1981. Counsel for the General Counsel did not indicate any desire or any availability for any earlier date that the matter could have been heard other than the hearing date of November 18, 1981. Additionally, the three Charging Parties in the subsequently filed cases are not the same as the Charging Party in the instant cases. In the interest of a timely resolution of those matters already heard, I deny counsel for the General Counsel's motion to reopen the record.

[3] The facts found herein are based on the record as a whole and upon my personal observation of the witnesses. The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits with due regard for the logic of probability, the demeanor of the witnesses, and the teaching of *N.L.R.B.* v. *Walton Manufacturing Company*, 369 U.S. 404, 408 (1962). As to any witnesses having testified in contradiction of the findings herein, their testimony has been discredited either as having been in conflict with the testimony of credible witnesses or because it was in and of itself unworthy of belief. All testimony has been reviewed and weighed in the light of the entire record.

Continued

tion of the brief filed by counsel for the Respondent,[1] I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Georgia corporation with a plant and facility located in Nashville, Georgia, where it is engaged in the manufacture and sale of textiles. During the 12-month period preceding the issuance of the most recent complaint herein, Respondent sold and shipped finished products valued in excess of $50,000 from its Nashville, Georgia, facility directly to customers located outside the State of Georgia. The complaints allege, Respondent admits, and I find that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

The complaints allege, Respondent admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

It is undisputed that the Union publicly began its organizational campaign among the 1,300 employees at Respondent's plant near the end of March 1980. It is also undisputed that Respondent became aware of the campaign, and it is alleged by the General Counsel that Respondent thereafter began to engage in conduct violative of the Act. In establishing the alleged violations, counsel for the General Counsel relied on the testimony of a number of employee witnesses. The testimony and response thereto are set forth below essentially in the order established by the various complaints considering all allegations of each complaint before considering the next complaint.

The following named individuals with indicated titles were either admitted or stipulated to be supervisors and agents of Respondent within the meaning of the Act, or there was no dispute with respect thereto: Van Cochran, plant manager; Gene Shearl, employment manager; James Sego, employee relations manager; Harold Hodges, finishing superintendent; Gene Williams, third-shift superintendent; B. J. Armistead, textile superintendent; Gerald Lewis, weaving superintendent; Pete Peterson, extrusion supervisor; Virgil Mathis, extrusion supervisor; Dan Jones, extrusion shift supervisor; Lynn Duck, supervisor; Howard Bennett, weaving shift supervisor; Barbara Walker, weaving shift supervisor; Marlin McClellan, weave room supervisor; Robert Tucker, weaving supervisor; Betty Tucker, warping department supervisor; James Beck, finishing process control engineer; J. C. Dixon, process control engineer; Rick Hingson, beaming supervisor; Collis Adams, maintenance supervisor; E. L. Nelson, supervisor; and Linda Roberts, plant nurse. Throughout this Decision, the correct title of the supervisors and agents will be utilized as though the correct title had been pleaded in the various complaints.

A. *Violations Alleged in Case 10-CA-16329*

The General Counsel contends in Case 10-CA-16329 that Respondent imposed more stringent working conditions on its employee Pat Warren on April 15, 1980, because of his membership in and activities on behalf of the Union in violation of Section 8(a)(3) and (1) of the Act; and further contends that Respondent violated Section 8(a)(4), (3), and (1) of the Act when it issued on September 19, 1980, a written warning to and thereupon discharged its employee Warren because he gave testimony to the Board in Case 10-CA-15752 and because he engaged in union and protected concerted activities. Additionally, in Case 10-CA-15752 at paragraphs 13, 14, and 14(a), the General Counsel alleges Respondent, acting through Process Control Engineer Dixon on or about April 2, 1980, and Weaving Superintendent Lewis on or about April 9, 1980, threatened employees with discharge, with more stringent working conditions, and with futility if they joined or engaged in activities on behalf of the Union in violation of Section 8(a)(1) of the Act; and still further at paragraph 18 of the complaint in Case 10-CA-15752 alleges Respondent suspended its employee Warren from on or about March 28 until on or about April 2, 1980, because of his membership in and activities on behalf of the Union in violation of Section 8(a)(3) and (1) of the Act.

Counsel for the General Counsel relied on the testimony of employees Warren and Fackler to establish the alleged violations listed above.

Employee Pat Warren commenced work for Respondent in April 1972. At the time of his discharge in September 1980, he was a style change loom fixer under the supervision of Warping Department Supervisor Betty Tucker.

Warren stated a group of Respondent's employees decided something needed to be done about working conditions at Respondent in September 1979. Warren was chosen as the spokesperson for the group.

According to Warren, he contacted the Board several times in Valdosta, Georgia, and the Board recommended he go to the Federal Labor Board in Thomasville, Georgia, because as such there was nothing that could be done for him at the Board. Warren testified that the individual at the Federal Labor Board in Thomasville, Georgia, told him that unless the employees at Respondent had union representation, they had no rights in the State of Georgia.[5]

Warren testified he contacted the Union herein, and, in January 1980, union officials came to his home to assist in organizational efforts. The employees started their campaign sometime in February or March 1980. Warren testified the first time the union campaign went public was on March 30, 1980. On that date Warren along with other of Respondent's employees handed out union leaflets at Respondent's plant. According to Warren, he was

[1] Counsel for the General Counsel attempted to file an untimely brief. Its untimely filed brief, including all copies, was returned to counsel for the General Counsel and was not in any way considered in the preparation of this Decision.

[5] I take official notice that the National Labor Relations Board does not have an established office in Thomasville, Georgia.

seen giving out union leaflets by Textile Superintendent Armistead, Weaving Superintendent Lewis, and Plant Manager Cochran.

Warren testified he was discharged on March 28, 1980, 2 days prior to the employees going public with their union campaign. Warren stated he was performing work on a loom which his supervisor had told him to work on when a maintenance employee by the name of Bob Fackler came to where he was working. Fackler told Warren that Fackler's supervisor had said for Warren to help Fackler straighten out a loom. Warren testified he had been working on the loom with maintenance employee Fackler for about 5 minutes when Warping Department Supervisor Tucker walked up and wanted to know what he was doing at the loom Fackler was working on. Warren told Tucker he was helping Fackler as she wanted him to do. Warren stated Warping Department Supervisor Tucker asked him who was his supervisor, she or maintenance employee Fackler. Warping Department Supervisor Tucker asked Warren to go to the office with her. According to Warren, Tucker asked him if he were trying to make her out a liar. Warren told Tucker he was not trying to make her out anything, that he was just stating the facts as he knew them. Warping Department Supervisor Tucker then took Warren with her to Weaving Superintendent Lewis' office. According to Warren, Tucker first entered Weaving Superintendent Lewis' office, had a conversation, and then invited him in. Warren asked if he could have J. C. Dixon with him and was told by Tucker that he did not need anyone.

Warren stated that before he could sit down, Weaving Superintendent Lewis told him, because of the seriousness of his offense, he was fired. Warren asked what the offense was, that he had a right to know why he was being fired, and Lewis told him there was no use saying anything else, he was fired.

Warren testified he was handbilling on March 31, 1980, at Respondent's plant and that Plant Manager Cochran approached him and asked him if he would go and visit with Employee Relations Manager James Sego. Warren visited Sego's office. Present at the time in addition to Warren and Sego were Textile Superintendent Armistead and Warping Department Supervisor Tucker. Warren stated Sego told him he had been treated too harshly by Respondent and "if you want your job back, come on in and go to work. We'll give you those three days." Warren stated he told Respondent's representatives he was a tired old man and wanted the next day, April 1, 1980, off. Warren testified he was not told his termination was being reduced to a suspension, but was rather told if he wanted to come back to work he could. Warren testified he was never paid for the time he lost between March 28 and April 2, 1980.

Warren returned to work on April 2, 1980, and immediately went to the toolroom to obtain his toolbox and ascertain if his tools were there. Warren testified Process Control Engineer J. C. Dixon and Warping Department Supervisor Tucker walked into the toolroom with him and that "they [employees] had some posters—union posters, in the break area, and all the people were proud to see me and waving at me and all." According to Warren, Process Control Engineer Dixon stated, "all this commotion going on, all this talking, all this stuff going on in this weave room, we don't want to hear anymore of it. That's it, it's over." Warren testified he told Dixon it was not all over; "We was going to organize a union and he hadn't heard it all yet." Dixon allegedly stated, "Pat, it's not going to work . . . . They tried that in Tifton last year at Stevens and it didn't work, and he said it won't work here." Warren testified he stood there a little while and then asked Dixon if he wanted him to go to work; Dixon indicated yes, but "he said, your past work record will not count anymore. It's over. You start anew. He said you've got to be 100 percent. He said if you make any little mistake, you'll be terminated again."[6]

Warren testified that commencing March 14, 1980, Weaving Department Supervisor Tucker would speak to him about his job every 10 days. Warren testified, however, he was hospitalized from April 20 until June 1, 1980. Warren stated he wore a union button from April 9, 1980, until he was terminated. Warren testified Weaving Superintendent Lewis asked him about a badly worn gear which fit a lino loom machine on April 9, 1980. Warren testified he did not know if he put the gear into the machine or not, and asked Warping Department Supervisor Tucker to see if that was the one he put on. According to Warren, Lewis told him he was paying him $6.16 per hour and that he wanted him to do a good job. Warren responded that he always did good work and that he intended to continue to do so. Warren stated Lewis told him he wanted more, better, and faster work and for Warren to be on the ball or he would get terminated.

As part of his continuing efforts for the Union, Warren testified he collected union cards on April 13, 1980, in the men's restroom and was seen doing so by Weaving Supervisor Robert Tucker.[7] Warren testified the card he obtained in the restroom that day from a fellow employee committee member was that of Abel Braswell, and that he stated at the time to his fellow employee he was proud to get the one from Abel Braswell. Warren testified that on April 19, 1980, the day before he entered the hospital for surgery, Warping Department Supervisor Betty Tucker pointed to his union button and said, "As long as you wear that we cannot be friends."

Warren testified Warping Department Supervisor Tucker showed him a harness on a lino loom machine on August 19, 1980, and told him that she knew he did not make the mistake which had been made on the machine, but she wanted him to see it so that he would not make that type of mistake in the future.

Warren testified he was terminated on September 19, 1980. Warren in describing the events leading up to his discharge testified the first thing that happened that morning after the whistle blew was that Warping Department Supervisor Tucker sent him to Weaving Supervisor Robert Tucker to find out what Tucker wanted

[6] As will be discussed *infra* in this Decision, employees, particularly Gardner and Hughes, had attempted to circulate a petition seeking to have Respondent reinstate employee Warren on March 31, 1980.

[7] Warren stated on cross-examination that Weaving Supervisor Tucker was not close enough to him in the bathroom to see whose name was on the card when he obtained employee Braswell's union card from a fellow employee

him to do about a particular loom. According to Warren, Weaving Supervisor Tucker was grouchy so he (Warren) simply got his toolbox and went into another room and remained for a period of time. At approximately 10:30 a.m. Warping Department Supervisor Tucker came to where Warren was and told him to go to the loom which he was to work on and pull the harnesses out and then attempt to find some heddles to repair the harness with because Respondent did not have any new heddles in its supply room. Warren told Warping Department Supervisor Tucker that he thought he knew where some harnesses were back in a room and he would go and look for them. Warren stated he had the feeling Tucker did not want him to do so, but finally told him to go ahead and look for any old harnesses that might still be there in the back at Respondent's plant.

Warren found some harnesses but not enough for the job he was working on. Warren needed approximately 300 additional heddles so he went to see if he could find Process Control Engineer Dixon. According to Warren, Dixon was in charge of the personnel who built harnesses.

Warren did not immediately locate Process Control Engineer Dixon, but did locate an employee of Dixon's department named Richard Brady. According to Warren, Brady at the time he approached him was using an airhose with a jug of fluid cleaning and blowing off harnesses. Warren testified that Brady did not have on safety goggles. Warren testified he could not find any heddles on his own and while searching for additional heddles he remembered where some other harnesses were which had been taken out of machines and placed on a wall in a different department, and he decided to see if he could find his supervisor, Betty Tucker, to see what she wanted done. Warren testified he could not find Warping Department Supervisor Tucker at the time, but did happen on Textile Superintendent Armistead and asked Armistead if he could use the heddles from off of the harnesses which he knew about. Armistead asked Warren where Warping Department Supervisor Tucker was; Warren told Armistead he had not see her in a pretty good while. Armistead then told Warren it was all right to go ahead and use the heddles.

Warren testified it was lunchtime when he met with Warping Department Supervisor Tucker. Warren told Tucker about the harnesses, but did not tell her he had already asked Textile Superintendent Armistead about them. Tucker told Warren they could probably use the harnesses he had located. Warren then told Tucker that he would need three or four men to help him get the harnesses down from the wall where they were stored. Tucker indicated she would get back to him with help. Warren stated the harnesses had hung on the wall for so long that they had dust and cobwebs clinging to them. Warren testified there was an airhose nearby so he picked it up and commenced to blow the harnesses off in an effort to get rid of the cobwebs and dust.

Warren stated he was expecting Warping Department Supervisor Tucker to show up with the helpers he had requested. Tucker appeared without the helpers and stated, "Ah ha, I caught you without goggles using an air hose." Warren testified he told Tucker the air was turned on very little; however, according to Warren, she told him it did not matter, that the airhose was on and he needed eye goggles on.

Warren testified Tucker told him the airhose situation was not really the reason she had come back to where he was, that she wanted him to go with her to the office. In the office Tucker "chewed" Warren out for going over her head in asking Textile Superintendent Armistead about using the parts Warren had located.

Warren stated that when Warping Department Supervisor Tucker finished saying what she had to say, he told her he wanted to say something personal to her. Warren then told Warping Department Supervisor Tucker that her husband, Weaving Supervisor Tucker, was awful grouchy and that, if they were having family problems, he wished she and he would keep them at home so that he would not have to be involved in them. According to Warren, this made Warping Department Supervisor Tucker angry. Warren testified Tucker then told him she was going to write him a warning for using the airhose without goggles. Warren refused to sign the warning.

Warping Department Supervisor Tucker asked Warren to remain right where he was and she returned in approximately 15 to 20 minutes with her husband, Weaving Supervisor Tucker. Ms. Tucker told Mr. Tucker that Warren would not sign the warning regarding the use of the airhose without goggles and asked him to witness it. Mr. Tucker then signed the warning.

Warren testified he at that time asked Warping Department Supervisor Tucker for a pair of goggles. According to Warren, a requisition was made out by Warping Department Supervisor Tucker and he went to the supply room and obtained a pair of goggles. Warren then went back to his toolbox, got a small wrench, turned the air pressure up, and began to clean the heddles utilizing the goggles.

Warren cleaned the harnesses, obtained the heddles therefrom, and finished working on the loom in the machine he was assigned to work on. Warping Department Supervisor Tucker asked Warren upon completion of his assigned work on the loom to go to the office with her again. Warren testified Weaving Superintendent Lewis was present in the office with Tucker and himself. Weaving Superintendent Lewis told Warren that Respondent was going to fire him again. Warren testified Lewis also stated, "We've tried to work all this out with you and everything, said we haven't been able to do anything with it, said I don't have any alternative but to terminate you." Warren protested by saying the air in the airhose he was using was barely turned on. Warren then asked for his check and was told it could not be prepared until the following Monday.

Lewis then told Warren he would escort him out the door. Warren reminded Lewis he had left his tools and toolbox at the loom and he wanted to check the tools before leaving. Lewis accompanied Warren to the loom where they gathered up Warren's tools. Warren testified he had some old union posters in his toolbox at the time he was gathering up the tools and he asked Lewis if he wanted to keep some of them. According to Warren, Lewis declined his offer. Warren stated he then attempt-

ed to pin a union button on Lewis, and, although Lewis was friendly, he would not let him do it.

Warren testified he had never seen in writing a rule requiring the use of goggles. He stated, however, he presumed there must have been one. Warren stated he had seen a rule about using goggles for grinders and stuff of that sort back in the maintenance shop. Approximately 3 or 4 years previous to his discharge, Warren testified he had a job at Respondent which required use of an airhose but he did not use goggles, but rather used safety glasses. Warren testified that at the time he was fired he was wearing safety glasses but not goggles. Warren further testified that to his knowledge loom fixers were never issued goggles.

On cross-examination Warren acknowledged he knew it was the proper thing to wear goggles when using an airhose at Respondent's plant. Warren also acknowledged the Respondent had provided tightly fitting goggles to wear when operating an airhose. Warren testified he had used an airhose while servicing lino looms and that Weaving Supervisor Tucker had seen him but had not said anything to him about it. Warren indicated the time period in which Weaving Supervisor Tucker saw him using an airhose without goggles was some years ago; and further, in response to a question by Respondent's counsel, Warren stated, "As far as I know, they [goggles] have always been available ever since I worked there."

Warping Department Supervisor Tucker testified she instructed employee Warren on March 28, 1980, to make a style change on a particular loom. Tucker stated she checked later and found Warren was not working on the loom she had assigned him to. Warping Department Supervisor Tucker discovered Warren on the other side of the mill helping a fellow employee, Bob Fackler, perform a task. Tucker asked Warren if he had completed the style change she had requested and Warren told her he had not, that he rather had come to help Fackler. Tucker informed Warren she wanted the style change completed on the loom she had assigned to him so that she could get the employees working that loom back into production and she would talk to Warren later. Warping Department Supervisor Tucker then proceeded to Weaving Superintendent Lewis' office and discussed the situation with Lewis involving Warren's failure to make the loom change she had instructed him to make. Warping Department Supervisor Tucker recommended to Weaving Superintendent Lewis that Warren be terminated.

Tucker testified that employee Bob Fackler had asked her earlier that same day if Warren could help him with a telescopic shaft on another loom. Tucker told Fackler that she could not spare Warren, that he had too much work to do, and suggested Fackler get the lino fixer on the particular job Fackler was working on to help him with the repairs rather than Warren.

Counsel for the General Counsel called employee John R. Fackler, who testified he was an overhaul maintenance employee of Respondent and worked under the supervision of Process Control Engineer Dixon. Fackler stated on the day Warren was discharged [March 28, 1980] he told Process Control Engineer Dixon he needed some help on a shaft he was putting in a loom and he was going to get Pat Warren to help him. Fackler stated he went to the other side of the weave room from where he worked and spoke with Warren's supervisor, Tucker, and asked her where Warren was because he needed him for a few minutes. Fackler stated Warping Department Supervisor Tucker told him that Warren was working on a lino. Fackler proceeded ahead and told employee Warren he needed him on a loom to show him how to put the shafts in. Fackler testified the next thing he was aware of was Warping Department Supervisor Tucker came and spoke with Warren, but he could not hear what they said, and they left.

Weaving Superintendent Lewis testified he terminated employee Warren at the recommendation of Warping Department Supervisor Tucker because Warren had failed to follow her specific instructions of making a style change on a loom.

Warping Department Supervisor Tucker impressed me as an articulate witness worthy of belief and, accordingly, I credit her testimony with respect to the events surrounding the March 28, 1980, discharge [later suspension] of employee Warren. Tucker had instructed Warren to perform a specific task. Warren failed to do so but rather went to another portion of the plant to help a fellow employee without permission. The testimony of employee Fackler, who was called by counsel for the General Counsel, tends to corroborate Tucker's testimony in that he told Warping Department Supervisor Tucker he wanted Warren to help him; but rather than giving permission to Fackler to use Warren, she informed Fackler, according to his own testimony, that Warren "was working on a lino." I have concluded and find that the discharge of employee Warren on March 28, 1980 [which was later reduced to a 3-day suspension], did not violate Section 8(a)(3) and (1) of the Act. By Warren's own testimony, the employees did not go public with their union activities until March 30, 1980. There is no showing on this record that Respondent had any knowledge of any activity on behalf of the Union by employee Warren at the time it instituted its actions against him on March 28, 1980. Counsel for the General Counsel has failed to establish a *prima facie* case with respect to the March 28, 1980, action taken against employee Warren by Respondent. The action of Respondent with respect to Warren on March 28 was in line with the past practice of Respondent as demonstrated by the fact that, according to the credited testimony of Warping Department Supervisor Tucker, Warren had received a warning on May 17, 1979, for performing an unsafe act. Warren had also received a warning for insubordination in March 1980, and was then discharged for his misconduct on March 28, 1980. The fact Respondent may have later reviewed and lessened discipline it meted out to employee Warren does establish an unlawful motive on the part of the Respondent at the time it disciplined Warren.[8] I therefore recommend that portion of the

[8] It was a practice of Respondent for Employee Relations Manager Sego to review the facts surrounding the discharge of employees, and it was his determination which resulted in a reduction from discharge to

Continued

complaint in Case 10-CA-15752, which alleges Respondent unlawfully suspended its employee Warren from March 28 until April 2, 1980, be dismissed in its entirety.

Employee Relations Manager Sego testified employee Warren came to his office on March 31, 1980. Sego's only conversation with Warren was to ask Warren to have a seat telling him that Textile Superintendent Armistead and Warping Department Supervisor Tucker would speak with him momentarily.[9]

Textile Superintendent Armistead testified he along with Warping Department Supervisor Tucker spoke with employee Warren in Employee Relations Manager Sego's office on March 31, 1980, and told him that his actions did not warrant a termination, his discipline was being changed to read "3-day suspension," and he would be able to report to work the next day. According to Armistead, employee Warren was pleased the discipline was being converted from a discharge to a suspension and asked for an additional day off stating he had not had enough sleep the previous nights because he had been up distributing leaflets at the plant. Armistead testified he granted Warren's request for an extra day off. Warping Department Supervisor Tucker corroborated the testimony of Armistead adding only that she told Warren she expected him to go out in the plant and do his job as he had always done.

I credit the testimony of Armistead and Tucker with respect to the March 31 meeting with Warren. I simply find unbelievable Warren's testimony that he was never told his discharge was being reduced to a suspension. Warren acknowledged that he was put back to work and he further acknowledged that he asked for and was granted an additional day off to rest up from his handbilling for the Union.

Process Control Engineer Dixon testified he along with Warping Department Supervisor Tucker accompanied employee Warren to check Warren's tools in the tie-in room at the time Warren returned to work on April 2, 1980. Warren asked Dixon if all his tools were there, and Dixon informed Warren they had been locked in a toolbox in the tie-in room and had not been opened during his absence. Process Control Engineer Dixon testified he told Warren he expected him to go back on his job, to do his job, to do what he was told, that he expected good work from Warren, 100-percent work from him, and if he (Warren) did that, there would be no problem. According to Dixon, Warren told him that he was going out and do his job, but he was also going to get a union in there. Dixon told Warren that was his privilege. Dixon denied telling Warren on April 2, 1980, that all of this stuff in the weave room had to be over, that Respondent did not want anymore of it. Dixon also denied telling Warren that the Union had tried to come in at Stevens in Tifton and it did not work and it would not work at Respondent.

I credit Dixon's testimony inasmuch as it is very logical and probable that a supervisor would instruct an employee who has just returned from a 3-day suspension for failing to follow instructions that the employee is expected to do what he is told and do his job 100 percent to avoid problems. I discredit Warren's testimony to the contrary, specifically the testimony he attributes to Dixon with respect to not wanting to hear anymore of the "commotion going on . . . in the weave room," that the Union did not work at Stephens and would not work at Respondent, and that Warren's past work record did not count. I therefore recommend that those portions of paragraphs 13, 14, and 14(a) of Case 10-CA-15752 which allege Respondent acting through Process Control Engineer Dixon on or about April 2, 1980, threatened employees with discharge, with more stringent working conditions, and with futility if they joined or engaged in activities on behalf of the Union be dismissed in their entirety.

The credited record evidence in this case does not support the General Counsel's contention that on or about April 15, 1980, and thereafter, Respondent imposed more stringent working conditions on employee Warren. Warren was asked on April 9, 1980, about a worn gear which was placed in a loom machine. Warren himself acknowledged that he did not know whether he put the gear into the machine or not, but did not deny that he had.[10] Further, Warren was shown on August 19, 1980, a mistake a fellow employee had made, was told it was not his mistake, but was only being shown to him so that when he had a like job to perform he would not make the same type mistake. Two instances of work performance discussion and/or training do not constitute, in my opinion, more onerous working conditions.

Warren's claim that he was called into his supervisor's office every 10 days commencing on March 14, 1980, does not hold up under close scrutiny particularly with respect to an unlawful imposition of more onerous working conditions. For one thing, the alleged calling into the office of Warren by Warping Department Supervisor Tucker commenced prior to any knowledge on the part of Respondent of any union or concerted activity on the part of employee Warren. It is also noted that during this same time period Warren was absent from Respondent for medical reasons from April 20 until June 1, 1980. Following Warren's return to work on June 20, he could recall only two instances when he was spoken to by Warping Department Supervisor Tucker—one instance being for talking too much, the other for smoking too much. The totality of each of these instances taken in conjunction with the two incidents set forth *supra* does not constitute, in my opinion, more onerous working

suspending the discipline given to employee Warren. I conclude and find there was no unlawful motivation in Sego's review and reduction of the discipline given Warren.

[9] Sego denied saying to Warren, if he wanted his job back, all he had to do was come into work and the Respondent would give him those 3 days.

[10] I conclude and find that the comments Warren attributes to Weaving Superintendent Lewis as having taken place on April 9, 1980, did not constitute an unlawful threat to discharge Warren nor did the comments constitute a threat of more stringent working conditions, but rather only constituted an admonishment to an employee who had just recently returned from a suspension for failing to follow instructions. I therefore recommend those portions of paragraphs 13 and 14 of Case 10-CA-15752 which allege unlawful threats of discharge and more stringent working conditions involving Weaving Superintendent Lewis be dismissed in their entirety.

conditions. I therefore recommend that portion of the complaint in Case 10-CA-16329 which alleges Respondent imposed more stringent working conditions on its employee Warren commencing on or about April 15, 1980, be dismissed in its entirety.[11]

Warping Department Supervisor Tucker credibly testified that on September 18, 1980, she needed a style change done on a lino loom machine and asked employee Warren to do the change. Tucker knew there were some heddles which could be utilized in the change in some old harnesses which were hanging on a wall of Respondent's plant. Tucker stated she checked on employee Warren to see what progress he was making toward obtaining the needed heddles and effecting the style change. When Warping Department Supervisor Tucker approached the area where employee Warren was working, she discovered he was using an airhose to blow debris from the harnesses without the use of safety goggles. Tucker told Warren he knew better than that and, according to Tucker, Warren responded, "Yes, you caught me this time." Warping Department Supervisor Tucker stated as a result of this safety infraction employee Warren was terminated. According to Tucker, the next step in the disciplinary procedure with respect to employee Warren was termination.[12] Weaving Superintendent Lewis testified he approved the termination of Warren on September 18 based on Warren's having violated safety rules—was using an air hose without protective safety goggles—which was a violation not only of plant safety rules but also rules of the Occupational Safety and Health Administration.

Warren acknowledged he was not wearing safety goggles at the time he was blowing debris from the harnesses from which he was going to obtain heddles to make the style change on the machine he was working on. Warren testified he was wearing safety glasses; however, the evidence tends to indicate glasses would not prevent debris from entering the eye from the side whereas tight fitting goggles would. Warren further acknowledged it was proper to wear goggles and that Respondent had provided tightly fitting goggles. Warren also acknowledged that, as far as he knew, goggles had always been available at Respondent. Further, Warren had signed for receipt of a copy of Respondent's safe practices guide, which, at page 12, paragraph 7, under safety rules, reads as follows:

> Never use air hose without protective goggles. Air hoses are not to be used to blow off clothing and should never be blown directly onto any part of your body.

Various of Respondent employees such as Monroe Stone, Allen Summerlin, and Gary Rooks testified safety goggles were required at Respondent; and employee Buck Browning testified that protective goggles could be worn safely over safety glasses. I therefore discredit employee Warren's testimony that he could not wear safety goggles over his safety glasses.

It is undisputed that from on and after March 30, 1980, Warren engaged in activities on behalf of the Union of which Respondent was aware of the activities. However, it is well settled that the mere fact that an employee is or has been a strong union advocate cannot serve to insulate that employee from discipline for violating lawful work rules. *Tennessee Plastics, Inc.*, 203 NLRB 1 (1973), enfd. 488 F.2d 535 (6th Cir. 1973). If an employee provides an employer with sufficient cause for discharge for which the employee would have been terminated in any event, the discharge cannot be held as unlawful merely because the offender was among the employer's most active union supporters. See *Tower Foods, Inc., d/b/a Tower of Americas Restuarant and Hotel*, 221 NLRB 1260 at 1269 (1975), and *Klate Holt Company*, 161 NLRB 1606 at 1612 (1966), and the cases cited at fn. 3 therein.

In an 8(a)(3) case such as the instant one where an employer's motivation is called in issue, the Board has set down certain guidelines which need be followed. *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083, 1089 (1980). Under the *Wright Line* principles, the General Counsel has the burden of establishing "a *prima facie* showing sufficient to support the inference that protected conduct as a 'motivating factor' in the employer's decision." Applying the *Wright Line, supra*, principles to the instant case, I consider the fact Respondent had knowledge of Warren's union activity, the fact that fellow employees had protested his earlier discharge, and the fact he had been a longtime employee to raise a suspicion that Respondent had an unlawful motive in its discharge of Warren. However, I am persuaded and find that the evidence is insufficient to support an inference that a motivating factor in Warren's September 1980 discharge was his union activity. I make this conclusion on the fact that Warren acknowledged he was not wearing safety goggles, that he knew and understood safety goggles were proper to be worn, and that as far as he knew Respondent had always made safety goggles available. Further, Warren had signed for and received a copy of Respondent's safe practices guide which specifically stated airhose was not to be used without safety goggles. The Act does not protect employees from their own misconduct even where union animus is present. See *Badische Corporation*, 254 NLRB 1195 at (1981).

I am persuaded and find that Warren's discharge on September 18, 1980, was brought about by his having willfully and knowingly violated Respondent's safety

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[11] I credit Warping Department Supervisor Tucker's testimony that she did not point to employee Warren's badge and say that as long as he was wearing that they could not be friends. Tucker acknowledged speaking with Warren prior to his going to the hospital and stated Warren told her he thought she was getting too far out on a limb like Van Cochran, but did not explain to her what he meant. I conclude that the conversation, which I find to have taken place as testified to by Warping Department Supervisor Tucker, could not in any way have constituted an element of more onerous working conditions or any other violation of the Act.

[12] In May 1979 Warren had been given a disciplinary warning for performing an unsafe act; namely, climbing on a loom. I discredit Warren's testimony that it was necessary to climb on the loom in order to replace the heddles. The overwhelming weight of the evidence considered in conjunction with undisputed facts compels a conclusion that Warren's testimony taken as a whole is unworthy of belief in those places where it was contradicted or uncorroborated. Gary Rooks, a loom fixer, and Allen Summerlin, a maintenance puller employee of Respondent, both testified it was unnecessary to climb on a loom to change heddles. Warren had also received a warning for insubordination in March and further had been discharged (which discharge was later reduced to a 3-day suspension) for gross insubordination in March 1980.

rules. Accordingly, I find no violation of Section 8(a)(4), (3), and (1) of the Act in his discharge.[13]

Even if I were to have concluded in the instant case that a *prima facie* showing had been established by the General Counsel, the burden would have been shifted to Respondent in accordance with the principles of *Wright Line, supra*, to demonstrate Warren's discharge would have taken place even in the absence of union activity. I would find Respondent had satisfied that burden. The record evidence conclusively demonstrates that Respondent disciplined employees before and after it exercised discipline against Warren for violating safety rules. For example, Respondent discharged employee J. A. Rollan in September 1977 for violating plant safety rules in that he was blowing off his clothing with an airhose. Respondent warned employee J. A. White in February 1977 for operating an airhose without goggles for eye protection. Respondent discharged Allen Hollis in February 1979 for committing an unsafe act. Respondent warned and suspended employee William Miller in September 1979 for committing an unsafe act. Respondent issued a warning and suspension to employee Phillip W. Lynch on March 4, 1980, for committing an unsafe act. Respondent issued a warning to employee Myrtle Bryant on July 17, 1980, for committing an unsafe act. And, employees Collis Roundtree and Ulysses Geer were issued warnings in September and October 1980, respectively, for using an airhose without wearing safety goggles. Warren's testimony that fellow employee Richard Brady was using an airhose without goggles fails to establish Respondent was aware of Brady's conduct even assuming, *arguendo*, it took place. I am therefore persuaded that even if the General Counsel had met his burden of establishing a *prima facie* case, Respondent met its burden of showing the discharge would have taken place even in the absence of the protected conduct of Warren.

Therefore, based on the foregoing and considering the record as a whole, I am persuaded that the complaint with respect to the unlawful discharge of employee Warren must be dismissed in its entirety.

B. *The Alleged Violations in Case 10-CA-15752*[14]

1. Alleged interrogation

The General Counsel alleges in paragraph 7 of the complaint in Case 10-CA-15752 that on or about specified dates between March 17 and 31, 1980, in and about the vicinity of its plant, Respondent by its supervisors and agents Employment Manager Gene Shearl, Finishing Process Control Engineer James Beck, and Process Control Engineer J. C. Dixon interrogated its employees concerning their union membership, activities, and desires in violation of Section 8(a)(1) of the Act.

Counsel for the General Counsel relied on the testimony of employees Rudolph Lovett, Fred L. Mikell, and Donald Dean Tidwell to establish the violations set forth above.

Fred Mikell, an employee of Respondent, testified he became aware of the union campaign at Respondent in the middle of March 1980. Mikell testified he had two conversations with Employment Manager Shearl, the first of which took place in the middle of March during a conversation when no one else was present. Mikell testified Shearl asked "had I heard anything about the Union trying to come in." No evidence was developed as to what, if anything, Mikell replied to Shearl.

A second conversation took place between Shearl and Mikell in the latter part of March or first of April. According to Mikell, this conversation took place in a hallway at the plant in which Shearl asked Mikell "if I'd heard anything about the Union coming in."

Mikell testified he and Shearl were longtime friends who had known each other since the eighth grade and had grown up and played together in a band. Mikell further testified his job brought him in contact with Shearl on a daily basis as he delivered mail at Respondent.

Employment Manager Shearl was called to testify by Respondent. However, he did not testify with respect to the conversations attributed to him by employee Mikell. Mikell impressed me as a witness whose testimony was worthy of belief. I therefore credit Mikell's uncontradicted testimony.

Respondent correctly states that all interrogation of employees is not illegal *per se*. Respondent contends that in applying the test set forth by the Second Circuit Court of Appeals in *Bonnie Bourne, d/b/a Bourne* v. *N.L.R.B.*, 332 F.2d 47 at 48 (2d Cir. 1964), which test was adopted by the Fifth Circuit in *Federal-Mogul Corporation* v. *N.L.R.B.*, 566 F.2d 1245, 1250 (1978), that no violation herein should be found. Respondent contends in light of the Fifth Circuit court test with respect to the instant allegation that there is no history of union animus on the part of Respondent at the time of the alleged interrogation; that there is no evidence Shearl was seeking information on which to base taking action against employee Mikell; that Shearl and Mikell had known each other for an extended period of time and had an amicable relationship; that Shearl's position of employment manager posed no threat to Mikell; and that the conversation was casual in nature—thus no violation. Respondent would then rely on the Board's holding in *Pepsi-Cola Bottling Co. of Los Angeles*, 211 NLRB 870 (1974), in which case the Board found an employer had not violated the Act when its supervisor questioned an employee concerning the employee's union sentiments, where the supervisor and employee were on first-name basis, where it did not appear that the supervisor was seeking information upon which to base taking action against the employee, and where the conversation was casual, informal, and occurred in an amicable atmosphere, and where the incident was isolated and innocuous in nature.

I conclude and find the interrogation which took place herein had no legitimate purpose and was not accompanied by any assurance against reprisals and as such violated Section 8(a)(1) of the Act, notwithstanding evidence the ensuing discussion took place in a friendly at-

[13] I find insufficient evidence in this record to support a finding that Respondent's discharge of Warren was motivated by his having given testimony to the Board in Case 10-CA-15752. The only evidence in that respect was that Warren had been named as a discriminatee in that complaint.

[14] For obvious reasons, all or portions of paragraphs 13, 14, 14(a), and 18 of Case 10-CA-15752 have been covered *supra* under Case 10-CA-16329.

mosphere where the supervisor and employee worked together in a close and amicable relationship. See *Erie Technological Products, Inc.*, 218 NLRB 878 (1975), and *Mayfields Dairy Farms, Inc.*, 225 NLRB 1017 (1976). I therefore find Respondent violated Section 8(a)(1) of the Act as alleged in paragraph 7 of the complaint in Case 10-CA-15752 with respect to Employment Manager Shearl.

Donald Tidwell testified he had worked for Respondent from May 1972 until June 1980 as a loom fixer under the supervision of Collis Adams. Tidwell testified fellow employee Warren had approached him in the latter part of September 1979 and inquired if he would be interested in starting a campaign for the Union at Respondent. Tidwell stated that Finishing Process Control Engineer Beck on March 28, 1980, asked him while he was alone in the break area, "Have you heard any rumors lately?" Tidwell told Beck he had not, that things were pretty quiet. According to Tidwell, Beck stated at that point: "Donald, you all are not fixing to bring a union on us . . . ." Tidwell responded he had not heard any more talk about a union than normal. According to Tidwell, the conversation lasted awhile longer, but he did not recall particulars.[15]

I credit the uncontradicted and undenied testimony of Tidwell with respect to his March 28, 1980, conversation with Finishing Process Control Engineer Beck. I conclude and find that the interrogation of Tidwell by Beck served no legitimate purpose and was not accompanied by any assurance against reprisals and as such constituted a violation of Section 8(a)(1) of the Act.

With respect to the allegation that Process Control Engineer J. C. Dixon interrogated employees concerning their union membership, activities, and desires on March 31, 1980, the General Counsel did not contend that any particular employee's testimony supported that allegation of paragraph 7. However, I shall consider the testimony of employees Hughes and Gardner with respect to this allegation of paragraph 7, and shall consider it along with the testimony in support of paragraphs 10, 11, and 12 of the instant complaint, which paragraphs shall be treated *infra*.

2. Alleged threats of loss of benefits

The General Counsel alleges at paragraph 8 of the complaint in Case 10-CA-15752 that Respondent acting through Finishing Process Control Engineer Beck on or about March 26, 1980, in and about the vicinity of its plant, threatened its employees with loss of benefits if they joined or engaged in activities on behalf of the Union.

Counsel for the General Counsel relied on the testimony of employee Rudolph Lovett to support this complaint allegation. Additionally, as indicated, *supra*, I shall consider herein whether Respondent interrogated Lovett or any other employee in the conversation.

Employee Lovett testified he had a conversation with Finishing Process Control Engineer Beck sometime near April 4, 1980. Carlton Brady and Charles Rice, two employee electricians, were also present. Lovett testified Brady asked Beck what he, Beck, thought of the Union. Lovett stated Beck replied, "I'm glad you asked me," and jumped off a table he was sitting on and began "prancing" the floor. According to Lovett, Beck stated, "These people are ignorant. They don't know what they're getting into, said they're going to lose their benefits or the park, have their wages cut back to the maximum [sic] wages. They'll lose their insurance and retirement plan." Lovett testified Beck "went on with a whole mess of it. I don't remember everything he said." Lovett asked Beck if he had ever worked under a union and Beck said he had not and hoped he never did. Lovett told Beck he had worked under a union all his life and he had never been treated as badly as he had in the spot he was presently working in.

Carlton Brady was called by Respondent and testified he had worked for Respondent for the past 2 years as an electrician. Brady was present on April 4, 1980, along with employees Charles Rice and Rudolph Lovett when he, Brady, asked Finishing Process Control Engineer Beck what he, Beck, thought about the Union. Brady testified Beck responded, "he didn't think we needed the Union—that if the Union was voted in, that all your rights would have to be renegotiated—like the vacations, holiday pay and stuff like that." Brady also stated Beck said employees "could lose their benefits," but did not say that they would lose them. Brady denied Beck said the employees were ignorant, did not know what they were getting into, or that they would have their benefits taken or wages cut or lose their insurance or retirement. Brady further testified Beck said "you could lose your—you couldn't go to your supervisor, maybe, like you could now. If you had a gripe or something, that you could go to a union steward or something and they would do it for you." According to Brady, Beck further stated "Once a union came in that a contract had to be negotiated with the union—with the company, and that you could—there have been cases where employees have lost more than they gained."

Charles Rice was called by Respondent and testified he was a 12-year employee of Respondent currently employed as an electrician. Rice was present on April 4 when a conversation ensued among employees Brady, Lovett, Finishing Process Control Engineer Beck, and himself. Rice testified Brady asked Beck what he thought about a union. According to Rice, Beck replied that he felt the employee's pay and benefits were in comparison with everyone else's and he really did not feel a need for the Union. Rice testified Beck said "that we could lose benefits during negotiations. He mentioned that we may lose some benefits through negotiations with the Union for a contract." Rice denied Beck ever at any point stated employees would absolutely lose benefits. Rice further denied Beck said employees would absolutely lose benefits. Rice further denied Beck said employees were ignorant, that they did not know what they were getting into, or that they were going to lose their benefits, or have their wages cut or lose their insurance and retirement plan. Rice testified Beck said, once a union

[15] The alleged conversation between Finishing Process Control Engineer Beck and employee Lovett will be discussed under the allegations of par. 8 set forth *infra*.

was voted in, they would have to negotiate with the union for any benefits that the employees may receive. Rice did not recall the subject matter of taking problems to supervisors as having been discussed. Rice did not recall Lovett asking Beck if he had ever worked for a union.

Finishing Process Control Engineer Beck testified he observed electricians Brady and Rice as they were working on a microprocessor at Respondent's plant on March 21, 1980. Beck was in charge of the installation of the microprocessor. The processor had just been installed and for unexplained reasons it had broken down. Beck had asked lead electrician Brady to look at the processor, and Brady had brought along with him fellow electrician Rice to try to ascertain why the microprocessor was not working. Beck testified that while they were going through the check list trying to get the processor to operate, Brady stated talking with him about going fishing in Florida and various other subjects, and then Brady asked Beck what he thought about the Union. Beck told Brady he did not think very much of it at this time; he felt Respondent's plant was above average in pay, the fringe benefits were better than plants around them, and he had friends in other areas who worked with mills of which their pay was not as good as those at Respondent.

Beck testified Lovett was present during the conversation, but he did not say anything to Lovett. According to Beck, Lovett stated he once belonged to a union and enjoyed working for a union. Beck testified Lovett did say he was dissatisfied with Respondent's policy of not promoting from within but rather hiring people from the outside. According to Beck, Lovett said he did not enjoy working for management-trainee Ronnie Hester. Beck had previously placed Hester in charge of Lovett for a period of time. According to Beck, Lovett stated he did not like working for Hester because of racial considerations. Beck testified Lovett further stated that he, Beck, should not have the job he had because he lived in Valdosta, Georgia, and they should have hired someone in the local area of Respondent to fill the job Beck had. According to Beck, the machine began to operate and he returned to his office.

I credit the testimony of Brady and Rice with respect to the above conversation. Each impressed me as truthful witnesses with no apparent motivation for telling other than the truth. Finishing Process Control Enginer Beck's testimony is essentially in line with that of Brady and Rice. I specifically discredit any testimony of Lovett which is contradicted or unsubstantiated by the testimony of Brady and Rice with respect to the conversation set forth above. More particularly, I specifically discredit the testimony of Lovett wherein he claimed Beck told him the employees were ignorant, were going to lose their benefits, their wages would be cut back to the maximum wages, and they would lose their insurance and retirement plans. Lovett impressed me as a very angry and hostile witness who would enhance or modify his testimony in any manner he might deem helpful to his own personal interests in the case.

I have concluded and find that the statements attributed to Beck by Brady and Rice when considered in the overall context in which they were made did not exceed the point of informing employees of the fact that in the give-and-take of negotiations they could lose benefits. Respondent through Beck did nothing more than merely explain the collective-bargaining process to employees and as such did not create a threat of a loss of existing benefits if the employees chose the Union. I am persuaded that in the context of this case Beck on behalf of Respondent was only communicating to employees that any reduction in wages or benefits would occur only as a result of the normal give and take of negotiations. It is permissible to inform employees of the realities of collective bargaining which include the possibility that the union in order to secure some benefits might trade away some existing benefits. See *Tufts Brothers, Incorporated*, 235 NLRB 808 (1978). I therefore recommend that paragraph 8 of Case 10-CA-15752 be dismissed in its entirety.[16]

3. Alleged threats of plant closure

The General Counsel at paragraph 9 of the complaint in Case 10-CA-15752 alleges Respondent acting through Weaving Room Supervisor Marlin McClellan and Supervisor E. L. Nelson on or about March 31, 1980, in and about the vicinity of Respondent's plant, threatened its employees it would close its plant if the employees joined or engaged in activities on behalf of the Union.

Counsel for the General Counsel relies on the testimony of employees James O. Bonham and Ronnie Bennett to establish the alleged violations.

James O. Bonham testified he was currently employed by Respondent and became aware of a campaign on behalf of the Union at Respondent at the end of March 1980. Bonham stated he had a conversation with his supervisor, E. L. Nelson, about the Union at the last of March 1980. Bonham testified the conversation took place the day after the first handbills or leaflets were passed out for the Union. The conversation took place in the supply room at Respondent in the presence of supply room clerk Harry Harper. Bonham testified he approached the supply room at approximately 7:30 p.m. on the last of March and informed supply room clerk Harper of the parts he needed. According to Bonham, supply room clerk Harper asked Supervisor Nelson if he were going to walk the picket lines with them. According to Bonham, Supervisor Nelson replied he was not, that regardless of whether they shut the plant down or not he would be paid. According to Bonham, supply room clerk Harper then asked Supervisor Nelson, "You mean they are going to shut the plant down?" Harper

[16] I conclude and find no credible evidence to support any allegation of a violation of the Act as alleged in par. 7 of the complaint with respect to Finishing Process Control Engineer Beck as it relates to his conversation with Lovett, Rice, and Brady near the end of March or first of April 1980. In considering the comment attributed to Beck by Brady, "you couldn't go to your supervisor, *maybe*, like you could now. If you had a gripe or something, that you could go to a union steward or something and they could do it for you" (emphasis supplied), I conclude and find this comment is far too vague to base any finding of a threat that employees would lose the right to go directly to management. Although there was no allegation of this nature in the complaint, I find the testimony to be too ambiguous to support any violation of the Act.

asked Nelson what he was going to do if all the mechanics walked out. According to Bonham, Nelson responded, "The same thing we're going to do if the Union comes in. Shut it down and board it up like they did the mill in Canada." Bonham then asked Supervisor Nelson if Respondent had shut a mill down in Canada. Supervisor Nelson responded "yes," that a union tried to get in and they shut it down and boarded it up until the employees decided they needed to work and then opened the mill back up. Bonham testified Supervisor Nelson said there was no union at the plant in Canada at the present time. Bonham testified he told Nelson he did not see how Respondent could afford to do that. Nelson allegedly replied to Bonham that that was what Respondent had informed him, that before they would let a union come in they would shut it down.

I credit the testimony of Bonham and conclude and find the statements made to Bonham in the presence of fellow employee Harper by Supervisor Nelson constituted a threat that Respondent would close its plant if the employees joined or engaged in activities on behalf of the Union.

Employee Ronnie Bennett testified that, after he had completed passing out union leaflets at the plant on March 31, 1980, he went into the plant and Weave Room Supervisor Marlin McClellan had a conversation with him. McClellan asked Bennett if all the people were still out on the road when he came into work. Bennett told McClellan they were. Bennett testified McClellan told him that somebody had recognized a bunch of people off the day shift, and then turned toward Bennett and said, "You know, they're going to close this place down, don't you?" Bennett responded "yeah," turned and walked off.

Weave Room Supervisor McClellan's job duties had changed so that at the time of the hearing he was the customer service representative for Respondent. However, at all times material herein, McClellan was the weave room supervisor on the 12 midnight to 8 a.m. shift. McClellan testified he came to work on the evening of March 30, 1980, at approximately 10:30 p.m. McClellan explained it was not unusual for him to report at 10:30 p.m. for a midnight shift because the day before had been a down day and he wanted to walk the job to check the equipment before the employees arrived. McClellan had a conversation with loom fixer Ronnie Bennett just prior to the midnight shift change. McClellan stated he was again walking the job to insure that all the looms were covered by regular as well as support personnel. As he was making his rounds, employee Bennett walked toward him and then made some reference to what was going on outside the plant. McClellan commented to Bennett, "I said, yeah, I hope they come on in and don't try to close the shift down—and went on. That was the extent of the conversation." McClellan testified the conversation lasted approximately 30 seconds and he had no other conversation with Bennett that night other than regular duty-type conversations and comments. McClellan stated he did not discuss the Union or the leaflets being passed out with Ronnie Bennett. Further, McClellan denied telling Bennett they were going to shut the place down.

The only two witnesses to this brief 30-second conversation tell very similar but slightly different versions of the conversation. There is no question but what employees were handbilling on behalf of the Union at the plant entrance on the date in question—the date itself being either just prior to midnight on March 30 or just after midnight on March 31, 1980. The conversation, after carefully observing both witnesses, appears to have been one of a concerned employee as to what would take place and a concerned low- level supervisor with whether the particular part of the shift he was responsible for would function that night. The comment attributed to McClellan by Bennett, "you know, they are going to close this place down, don't you," even if said, would have to be viewed in the context of the conversation in which it arose. Two equally valid interpretations could be placed on the comment: (1) that union efforts would cause the plant to be closed down; or (2) employees staying at the entrance and picketing would not be available for work and thus close the shift down. McClellan impressed me as a conscientious individual who came to his employment an hour and a half ahead of schedule to ascertain that the machines and equipment, for the portion of the work on the shift he was on, were prepared and ready for employees. Further, McClellan's check through at the very beginning of the shift to insure employees were working on each of the machines he was responsible for convinces me and, accordingly, I find that McClellan's account of the conversation is more probable, reliable, and trustworthy. As such, I credit his testimony with respect thereto. Accordingly, I therefore recommend that portion of complaint paragraph 9 of Case 10-CA-15752, which alleges Respondent through Weave Room Supervisor McClellan threatened its employees the plant would close if they joined or engaged in activities on behalf of the Union, be dismissed in its entirety.

4. Alleged unlawful no-solicitation, no-distribution rule and alleged confiscation of a union-related petition

The General Counsel at paragraphs 10, 11, and 12 of the complaint in Case 10-CA-15752 alleges that on or about March 31, 1980, Respondent promulgated, maintained, and enforced a rule prohibiting any union-related solicitation and distribution by its employees on Respondent's property; and that by promulgating, maintaining, and enforcing the rule, it prohibited its employees from soliciting their fellow employees during nonworking time to join or support the Union, and prohibited employees from distributing union leaflets to their fellow employees during nonwork time in nonwork areas. Paragraph 12 alleges Respondent by its supervisor and agent, Process Control Engineer Dixon, on or about March 31, 1980, confiscated in violation of Section 8(a)(1) of the Act a petition being circulated among its employees which protested the discharge of one of its employees.

Counsel for the General Counsel relies on the testimony of employees Marie Hughes and Peggy Gardner to establish the alleged violations.

Marie Hughes, a weaver at Respondent's plant, became aware of a union campaign at Respondent at the last of March 1980. Hughes testified that at a union meeting on March 30, 1980, employees discussed circulating a petition on behalf of fellow employee Pat Warren protesting his discharge as being unfair. Hughes and fellow employee Peggy Gardner volunteered to obtain signatures from employees on the petition on the shift they worked on. On March 31, 1980, Hughes and Gardner proceeded to Respondent's premises at approximately 30 minutes prior to the commencement of their shift. Upon their arrival at Respondent's plant, Hughes and Gardner obtained the petition they utilized from a fellow employee, Steve O'Neal, and proceeded to the porch area leading into Respondent's plant. Hughes testified employees gathered on the porch prior to clocking in for work. Hughes and Gardner commenced obtaining signatures on the petition protesting employee Warren's discharge; and, after obtaining three or four signatures, Process Control Engineer J. C. Dixon and Tommy Hogan, who apparently was an acting substitute supervisor, appeared on the porch where the employees were. Hughes testified Process Control Engineer Dixon reached over and took the petition from them. Hughes attempted to get the petition back, but Dixon would not give it back to her. Hughes protested that the petition was the employees' and they wanted it back. Hughes testified Dixon asked whose petition it was, and she told him everyone who had signed it. Dixon then asked who was passing the petition around. Hughes testified she and Gardner just looked at each other and at that point Dixon took them to Weaving Superintendent Lewis' office. Dixon left Lewis' office with the petition to take it to Employee Relations Manager James Sego.

Process Control Engineer Dixon and Weaving Superintendent Lewis returned to Lewis' office where Hughes and Gardner were waiting and wanted to know about the petition which was being passed around. Weaving Superintendent Lewis stated he was going to Employee Relations Manager Sego's office to find out about the petition. Hughes told Lewis she would tell him about the petition, that it was on behalf of Pat Warren, that the employees felt Warren had been fired unfairly, they wanted Warren put back to work. According to Hughes, she and Gardner were told they could not do this by Weaving Superintendent Lewis. According to Hughes, Lewis stated he would not talk about Warren's problems with Gardner and was not going to talk to Warren about Gardner's problems. Hughes testified Lewis left the office and Dixon then stated they could not pass around the petition or obtain signatures because it was "in the manual we couldn't do things like that." Hughes stated she had never seen any such manual. Gardner accused Dixon of changing the rules so often the employees did not know what really constituted the rules. After a short period of time, Dixon informed Hughes and Gardner to go to work and he would get back to them. Hughes testified she never after that time saw the petition again. Hughes did not know the exact number of employees who had signed the petition, but she stated the front page of the petition had two full columns of signatures.

Hughes acknowledged that from time to time Respondent posted rules on its bulletin board and one of those posted rules concerned solicitation and distribution indicating it was prohibited on Respondent's time.[17]

Employee Gardner corroborated the testimony of Hughes in all essential aspects.

Process Control Engineer Dixon testified that on March 31, 1980, at approximately 7:40 a.m. he observed individuals circulating a piece of paper on the porch outside the weave room. Dixon wanted to find out what was going on. He testified an individual would sign the piece of paper, pass it to another, they would sign it and pass it on. Dixon testified he put his hand out as the paper was being passed along and it was given to him. Dixon read the paper and asked who was responsible for passing it around. He testified Gardner and Hughes stated they were responsible. He took them to Weaving Superintendent Lewis' office. Dixon testified he took the petition to Employee Relations Manager Sego's office. Dixon returned to where Hughes and Gardner were after talking with Sego and told Hughes and Gardner to report to work. Dixon stated that one of the employees, either Hughes or Gardner, asked if they could have the petition back, and he told them it would be given back to them if possible. According to Dixon, there were no further discussions with respect to the petition.

Weaving Superintendent Lewis testified he discussed the petition being circulated with employees Hughes and Gardner in his office. Lewis told the two employees he did not know for sure what, if any, disciplinary action should be taken with respect to their having circulated the petition for signatures, but he would check it out and get back to them. Lewis testified he had no further discussion with either Hughes or Gardner thereafter. Lewis testified that when he first met with Gardner and Hughes on the morning of March 31, 1980, he was in a hurry to catch an airplane out of town and that he took just a few minutes with them in his office and explained to them "that we had never allowed any kind of solicitation on company property." Lewis testified he found out from Employee Relations Manager Sego that what the employees were doing was part of a collective-bargaining procedure and was protected. There was nothing Respondent could do. Lewis stated that, as a result of what Sego told him, he allowed the two employees to proceed to work.

The Respondent contends that although it could be argued its agents "acted hastily when they took possession of the petition," it was obvious no malice or unlawful activity was contemplated by Respondent when it seized the petition. Respondent also contends the action of seizing the petition really accelerated the realization of the ultimate goal of the petition, which was having employee Warren's discharge reviewed. Respondent argued in brief: "This single, arguable violation, when viewed in the terms of an organizing campaign that lasted over a

[17] Respondent introduced at the hearing as Resp. Exh. 17 what purported to be the plant rules. Rules 12 and 13 prohibited:

> Distribution of literature of any kind in work areas, solicitation of any kind during the employees' work time or in such a manner as to interfere with the work of others.

period of six months, did not result in the discipline of any of the employees involved and accomplished the objective of the petition. This incident is insufficient to hold that Respondent's valid no-solicitation rule was enforced in a disparate manner."

The events surrounding the circulating of the petition on March 31, 1980, by the employees who were soliciting signatures thereon and Respondent's subsequent seizing of the petition are for the greater part undisputed. At any place there exists any conflict, I credit the testimony of Hughes and Gardner, particularly that of employee Hughes, as being the most accurate and trustworthy.

A somewhat limited but rather succinct statement of the legality of no-solicitation and no-distribution rules is set forth in *Newport News Shipbuilding and Dry Dock Corporation*, 233 NLRB 1443, 1450 (1977), wherein it is recognized that the legality of no-solicitation and no-distribution rules has been the subject of extensive Board and court litigation since the Supreme Court's landmark decision in *N.L.R.B.* v. *Republic Aviation Corporation*, 324 U.S. 793 (1945). *Stoddard-Quirk Manufacturing Company*, 138 NLRB 615 (1962), is probably the case cited most often by the Board with respect to no-solicitation, no-distribution rules. In *Stoddard-Quirk, supra*, the Board enunciated a rule respecting oral solicitation, which simply stated is that an employee has the right to solicit on plant premises subject to the restriction that solicitation may be restricted to nonworking periods. With respect to the distribution of literature, the same restriction applies with the further limitation that distribution of literature may be lawfully limited to nonworking areas of the plant. Any plant rule which would further limit or proscribe solicitation or distribution would be presumptively invalid. In the instant case employees were passing around a petition and soliciting signatures on it to protest the discharge of a fellow employee. The evidence is unrefuted that the circulation of the petition and the soliciting of the signatures took place on the porch which led into the weave room, an area which is clearly a nonworking area, and the activity took place at a time which was clearly a nonworking time. Respondent through Dixon and with the approval of Lewis told the employees they were prohibited from doing such, that is, they were prohibited from passing around a petition and soliciting signatures in a nonwork area at a nonwork time at Respondent. It would be difficult to conceive of a broader prohibition against solicitation and distribution. See *FMC Corporation*, 211 NLRB 770 (1974). I therefore conclude and find Respondent violated Section 8(a)(1) of the Act when, on March 31, 1980, it orally promulgated, maintained, and enforced a rule prohibiting any union-related solicitation and distribution on its property, and by doing so it prohibited employees from soliciting their fellow employees during nonworking time to join or support the Union and prohibited its employees from distributing leaflets to fellow employees during nonworking time and in nonworking areas.

I reject Respondent's contention that what transpired in the instant case was an insufficient incident of disparate enforcement of a valid no-solicitation rule. The evidence is clear in the instant case that it is not a situation of disparate enforcement of a valid no-solicitation rule, but rather is the promulgation of a new rule by Respondent through its agents and supervisors, Dixon and Lewis, and as such the March 31, 1980, announcement replaced Respondent's previous rule.

I further conclude and find Respondent's acknowledged confiscation of the petition in the circumstances of this case constituted interference in violation of Section 8(a)(1) of the Act as alleged at paragraph 12 of the complaint in Case 10-CA-15752. Additionally, Process Control Engineer Dixon's inquiry of employees Hughes and Gardner as to who was circulating the petition and who had signed it constituted interrogation in violation of Section 8(a)(1) of the Act as alleged at paragraph 7 of the complaint in Case 10-CA-15752.

5. The warning and subsequent suspension of employee Rudolph Lovett

The General Counsel alleges at paragraphs 17 and 19 of the complaint in Case 10-CA-15752 that Respondent issued a warning to its employee Lovett on or about April 4, 1980, and from on or about April 29 to May 1, 1980, Respondent suspended its employee Lovett because of his membership in and activities on behalf of the Union and because he engaged in concerted protected activity. The General Counsel also alleges at paragraph 13 of the complaint in Case 10-CA-15752 that Respondent, acting through Finishing Superintendent Hodges, had threatened employees with discharge and other reprisals if they joined or engaged in activities on behalf of the Union. Inasmuch as the General Counsel relies on the testimony of employee Lovett to establish the violations set forth, I shall consider each of the above allegations together.

Employee Lovett, a chemical mixer for Respondent, worked under the supervision of Finishing Process Control Engineer Beck. Lovett became aware of the union campaign at Respondent sometime in March 1980. Thereafter, Lovett signed a union card, attended five of six union meetings, gave out a few handbills on behalf of the Union, talked it up in the parking lot, and wore a union button which stated "Amalgamated Clothing and Textile Workers Union, ACTWU, Union Committee." Lovett's name appeared on a leaflet used as a handbill for the Union. According to fellow employee Tidwell, April 16, 1980, was the first time the handbill (G.C. Exh. 3) was passed out.

Lovett testified with respect to a conversation among employees Brady and Rice, Finishing Process Control Engineer Beck, and himself on April 4. As is set forth earlier in this Decision, Lovett's testimony with respect to portions of that conversation was not credited.

Lovett testified that on April 25, 1980, Finishing Superintendent Hodges and Finishing Process Control Engineer Beck came to where Lovett was working. According to Lovett, he "was working toting stuff up a set of stairs about 17 high, had a bucket to put in the mix. As I sent by a black man named Leonard Crappes, I said there's going to be a meeting in Adel Tuesday night." Lovett testified he told Crappes this because Crappes had been asking him about it. Lovett further testified:

Q. [By counsel for the General Counsel]: What happened next?

A. I got the stuff and went on back downstairs and come back down to get another bucket and Hodges had him all hugged up.

Q. Had who hugged up?

A. Leonard Crappes.

Q. Was that unusual?

A. Very unusual to me.

Q. Why was this so unusual?

A. Because Leonard is black, and Harold don't talk to nobody in that manner.

Q. What happened next? Had you ever seen Hodges talking to Crappes before?

A. Never.

Lovett returned to his job upstairs. He testified he again observed Finishing Superintendent Hodges with his arm around the neck of employee Crappes. Sometime during the day, Finishing Process Control Engineer Beck told Lovett they were going to give him a warning for pressuring a coworker during working hours about a union. Lovett was taken to an office where Beck and Finishing Superintendent Hodges were and "they told me what they had to do and what I had been doing—asked me did I have anything to say, and I told them no, unless you make me mad I might say something—two or three words. I don't remember the exact words but I just pointed at my badge and said that's what's causing it all, and you know it." According to Lovett, he was wearing a union button at the time.

Following this incident, Lovett received yet another warning and, although he did not remember the exact time, he believed it was around April 28, 1980. This warning was for not clocking out at a time when his timecard was missing, according to Lovett. On April 28, 1980, Lovett proceeded to the timeclock rack where there were 80 or 90 cards of which his card had always been on top, or at least one or two from the top, behind alphabetical letters. Lovett reached for his timecard, but it was gone. According to Lovett, Finishing Process Control Engineer Beck was leaning up against a rail which separated the timeclock from another area; and, after Lovett looked and looked for his timecard with people pushing him, he turned to Beck and asked if Beck had his timecard. Beck responded he did not. Lovett asked Beck what he had done with his timecard; Beck responded it was where it belonged. Lovett asked Beck where he put it, and Beck responded, "What do you think I've got, a photostatic mind?" Lovett then told Beck he could get his, Lovett's, card and mark it when he picked them up, that he was leaving. Lovett testified he came around the rail where Finishing Process Control Engineer Beck was, and as he did he told Beck his card belonged between Joe Lloyd and Joe Ames. Lovett testified Beck told him it was not there, that Lovett's name was not at that place. Lovett stated, "I just walked out the door and went home."

Lovett reported to work on the following Monday and found his timecard in the usual place between Joe Lloyd and Joe Ames and, according to Lovett, the cards were filed alphabetically. Lovett inquired of an ex-supervisor, Sue Williams, about the cards because he knew she used to arrange the cards. According to Lovett, Williams was able to pull his card out without looking, that she knew precisely where it was, between Lloyd and Ames. Lovett testified Beck came by where he was and he asked Beck if he had found his timecard. Beck told Lovett his card had been in the bottom right-hand corner where it always belonged. Lovett testified his card had never been in the bottom right-hand corner in the 11 years he had worked there. Beck showed Lovett where he found the card. Lovett told Beck someone had put the card in the slot under where his name appeared. Lovett testified his name was under the slot, but it had never been there before.

The next day, Tuesday, at approximately 4 p.m., Lovett testified he was called apparently into Finishing Process Control Engineer Beck's office where he was told he was being given 3 days off for walking out and leaving his timecard unpunched. Lovett told Beck that, if that was what he had to do, to do it, it was his job. Beck told Lovett he already had the suspension written out.

According to Lovett, he was then told to go to Employee Relations Manager Sego's office where he and Sego talked about the suspension for a while. Lovett testified Sego said he would try to get the 3 days back Lovett was going to lose. Lovett stated, "We argued around there for a while," and he told Sego it was his union badge that had done him in. Sego responded no, that wearing the union badge was Lovett's privilege. Lovett testified that Employee Relations Manager Sego looked through his file at the time and told him it was "as good a record as he had ever seen." Lovett responded to Sego by saying it was funny he would go this length of time without a warning and then get a warning and a 3-day suspension in approximately 2 weeks' time. Lovett testified he had never received any warnings or reprimands prior to the two in question.

On cross-examination Lovett stated his timecard had not been in the timecard rack on several occasions. Lovett also acknowledged that various people were responsible for taking the timecards from the rack, making the necessary notations thereon, and replacing them back in the rack. For example, he testified this had been done by Sue Williams, Virginia Fender, Ronnie Hester, Jim Beck, and "a bunch of them down there." Lovett also testified on cross-examination that, on the occasion in question, when he could not find his timecard, he just threw up his hands and walked out. Lovett denied he was suspended for threatening to do physical harm to Finishing Superintendent Hodges and Finishing Process Control Engineer Beck, but rather stated his suspension was for not punching the timecard. Lovett acknowledged he did not read the warning, but stated the warning was read to him by Beck and there was no mention of physical harm in it. Lovett acknowledged he may have admitted to Employee Relations Manager Sego he had made threats to Hodges and Beck inasmuch as Sego made him "pretty mad." Lovett admitted telling Finishing Superintendent Hodges, while kidding around with him, "I said he was going to keep picking on me until I

was going to bruise him up so bad he would have to wear a sack over his head."

Finishing Superintendent Hodges testified that in early April 1980 he was making a routine tour of his department and in doing so he passed employee Leonard Crappes' work station and as he did Crappes asked Hodges to speak with him. Crappes told Hodges employees Lovett had been bothering him on his job while he was at his work station performing his work—wanting him to attend union meetings. Crappes told Hodges he did not want to be bothered by Rudolph Lovett. Crappes told Hodges that Lovett said if he Crappes, did not come to the meetings, the Union would come to his house. Hodges testified Crappes informed him that this had happened three or four times before and he wanted it stopped.

The same day of the conversation with Crappes, Hodges discussed the matter with Lovett's immediate supervisor, Finishing Process Control Engineer Beck.

Hodges testified Lovett was then brought to an office where Beck gave him a warning for bothering fellow employee Crappes while he was performing his job. Hodges testified Lovett refused to sign the warning so he, Hodges, signed it as a witness. Lovett then told Hodges that the first time he saw Hodges down in Lovett's department he knew he would try to run him off. Lovett told Hodges he wanted him to come to his house. Hodges told him he would talk to him, but he did not feel like he would do so under those circumstances. Lovett then asked Hodges where he lived and told him he would come to his house. Hodges told Lovett it was no secret where he lived. As Lovett walked out of the office, he said to Hodges, "just tell me where you live, I'll be there." Hodges asked Lovett if he meant that as a threat. Lovett responded no, he just wanted to talk with him.

Leonard Crappes testified he was an operator helper on the J box in the finishing department and as such worked near employee Lovett. Crappes has been employed by Respondent for 10 years. Crappes testified he spoke with Finishing Superintendent Hodges about employee Lovett bothering him on the job. Crappes asked Hodges to have Lovett stop bugging him about the Union while he was working because "I couldn't do my work for him." Crappes testified Lovett had been bugging him for 6 or 7 weeks about signing a card for the Union.

Crappes acknowledged on cross-examination by the General Counsel that he considered Lovett to be a cantankerous, unfriendly individual. Crappes testified Hodges did not have his arm around him nor did he touch him during the conversation. Crappes stated he could not even do his work when Lovett was around him because Lovett would bother him about the Union.

Respondent contends employee Lovett interfered with the work of employee Crappes in violation of Respondent's work rules, as evidenced by a signed complaint of Crappes regarding the interference by Lovett, that Lovett had an opportunity to explain his conduct or rebut it, that he made no attempt to do so, and that an appropriate level of discipline was imposed in accordance with Respondent's established disciplinary policy.

I credit the testimony of employee Crappes that he could not perform his work in the manner he had previously been able to because of the constant "bugging" that Lovett inflicted on him. The real issue in this particular incident is not whether Lovett had a right to solicit fellow employees, but rather whether Respondent may maintain order in the work of a fellow employee during worktime. I credit the testimony of Crappes as corroborated by Hodges that it was Crappes who first went to Finishing Superintendent Hodges to complain of the work interference of Crappes by Lovett, and I specifically discredit any testimony of Lovett to the contrary. The evidence is quite clear Respondent was merely following its established disciplinary procedure and practice with respect to employee Lovett. I therefore recommend dismissal of that portion of the complaint in Case 10-CA-15752 which alleges Respondent violated Section 8(a)(1) and (3) of the Act by issuing a warning to its employee Lovett on or about April 4, 1980.

I shall also recommend dismissal of that portion of paragraph 13 of the complaint in Case 10-CA-15752 which alleges that Finishing Superintendent Hodges threatened employees with discharge if they engaged in activity on behalf of the Union inasmuch as there is no credited evidence on which to base such a finding.

Finishing Process Control Engineer Beck testified that Respondent installed a new microprocessor in the middle of March 1980. Beck personally designed and purchased the microprocessor for Respondent in California. Beck testified that, since he had designed the microprocessor, it was decided he would be in charge of its operation. When he became in charge of the operation of the microprocessor, the batch mixers at the plant came under his supervision. At the time the batch mixers came under his supervision, employee timecards were being taken from and placed back into the timecard rack slots by management trainee Ronnie Hester. On Friday, April 25, 1980, Hester had pulled the timecards from the timecard racks, had used Beck's desk to work on them, but, before he had an opportunity to replace them in the timecard racks, he was called away to attend a meeting. Therefore, Beck placed the cards back into the rack himself. Beck testified, and I credit his testimony, that he had never placed the timecards in the rack prior to that time. Beck testified he placed the cards in the rack at approximately 3 p.m., and the timecards were placed back in the rack at the place where the employee's name appeared on the rack. Beck testified he placed Lovett's card right above where Lovett's name appeared. The shift on that day ended at approximately 4 p.m. After the employees clocked out, Beck collected the cards because Respondent was not scheduled to operate the facility on the next day, Saturday.

Beck testified Lovett walked to the rack to obtain his timecard, turned around, looked at Beck, and asked where his card was. Beck told Lovett his card was in front of his name on the rack as was everyone else's card. Beck testified Lovett looked back at the rack, turned around and looked at Beck, threw his hands up in the air in disgust, did not say anything, turned and walked out. Beck testified Lovett only glanced at the

timecards. Beck testified the 90 other employees checking out at that clock found their cards, clocked out, and left.

Beck testified Lovett's card was in front of his name on the timecard rack when he (Beck) collected the timecards. Beck took the cards to his immediate supervisor and explained to him what had happened with respect to Lovett and penciled in on Lovett's card the correct hours for Lovett.

Beck walked through the department toward Lovett's area on the following Monday at approximately 11:30 a.m. Lovett walked up to him and asked him if he had found his timecard. Beck told Lovett he had, that it was in the slot where he had put it. Beck told Lovett he was in a hurry at that particular time but would speak with him later about the card.

Later that afternoon Beck talked with Lovett in Beck's office about the timecard. Beck explained to Lovett he had placed the timecards in the rack, that it was the first time he had ever done so, and that he was very sorry for any confusion which might have resulted from the timecard situation. Beck testified Lovett was very upset and told him he did not believe him that he had just put his timecard somewhere else so as to aggravate him and create problems for him. Beck testified he tried to level with Lovett and explained to him he was sorry that it had happened and that in the future he would insure Lovett understood where the timecard would be. Lovett then told Beck "if I ever went crawling through the area like a snake or something on the floor that he would stomp me to death and that one day Harold Hodges would be coming in shortly with a sack over his head because he would be bruised up so bad because he was going to get him; that he was going to break both his bones—his arms and break both his legs." Beck testified Lovett was very upset both with him and with Hodges. Lovett told Beck he (Beck) did not deserve his job, that he was a son-of-a-bitch, and that Respondent should promote people from within instead of hiring people like Beck from the outside. Lovett told Beck that James Sego would be hurt one day because he was walking around motel parking lots where he did not belong, that somebody was going to beat him up. Beck testified, "the main thing he kept stressing was the fact that he was going to do physical harm to me, and that he was going to do physical harm to my immediate supervisor, Harold Hodges." Beck said Lovett continued the conversation by talking about Leonard Crappes. Beck testified Lovett said "that Harold had made that nigger Crappes sign that paper because he was real close friends with him, and that he just—that Harold was really just pushing toward Crappes to get him just to sign the paper to give him a warning." According to Beck, as soon as Lovett completed that comment he left the office.

Beck proceeded to discuss the matter with his supervisor, Hodges, telling Hodges what Lovett had said.

The following day Hodges and Beck met with Employee Relations Manager Sego, according to Beck, "because I felt like that I had been threatened, and I felt like my supervisor had been threatened with physical violence." Sego, Hodges, and Beck discussed the incident and decided to give Lovett a 3-day suspension because of the threats he had made to Beck and regarding Beck's supervisor, Hodges. That afternoon Lovett was given a 3-day suspension for threatening a supervisor.

Respondent contends the suspension of Lovett from April 29 until May 1, 1980, resulted from his having threatened Finishing Process Control Engineer Beck and Finishing Superintendent Hodges with physical harm. Respondent contends the Board has consistently held that an employer has the right to maintain order and respect among its employees and to discipline employees for threatening violence against the employer or its employees. The Respondent further contends there is no credible evidence Respondent had any knowledge of Lovett's union support other than Lovett's self-serving testimony that he wore a union button, which contention it argues was rebutted by the testimony of employees Outlaw, Ash, and Garrett, who each testified they knew Lovett, worked with him on a frequent or daily basis, and never saw him wear a union button. As such, the Respondent contends counsel for the General Counsel did not establish a *prima facie* case within the principles and guidelines spelled out in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

There can be no question but what Respondent knew Lovett favored unions inasmuch as Finishing Process Control Engineer Beck acknowledged employee Lovett told him on March 21, 1980, that he worked for a place which had a union and enjoyed working under a union. Further, Respondent was well aware Lovett was for the Union by April 4, 1980, inasmuch as Crappes' complaint to Finishing Superintendent Hodges was that Lovett was interfering with his work in an attempt to have him support or join the Union. Respondent relied on this complaint of Crappes. I find it unnecessary to determine whether Lovett wore a union button on the two specific incidents herein, particularly on April 4, 1980, inasmuch as I find Respondent was fully aware of Lovett's union activity without having to rely on whether Lovett wore a union button or not. It is undisputed on this record that Lovett had worked for Respondent for 11-1/2 years without receiving warnings. Finishing Process Control Engineer Beck testified he thought Rudolph Lovett was a good employee, that he did him a very good job, that he worked every day, and very rarely did he have any problems with Lovett.

As indicated elsewhere in this Decision, cases alleging 8(a)(3) violations, such as Lovett's suspension, wherein employer motivation is called in question, the Board in *Wright Line, Inc., supra*, stated: "First, we shall require that the General Counsel make a *prima facie* showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct." In the instant case, as it pertains to the suspension of Lovett, I find counsel for the General Counsel has established a *prima facie* case. Respondent had knowledge of Lovett's union sympathies and, as is shown elsewhere in this Decision, Respondent demonstrated union animus;

this taken in conjunction with Lovett's length of service as an acceptable employee without reprimand other than those discussed herein clearly supports an inference that protected conduct was a motivating factor in Respondent's decision to discipline Lovett.

I find, however, that Respondent met its burden of demonstrating that the same action would have been taken against Lovett even in the absence of his protected conduct.

I credit the testimony of Beck that Lovett was disciplined for making threats of physical violence toward the persons of Beck and his immediate superior, Finishing Superintendent Hodges. As indicated elsewhere in this Decision, after careful observation and consideration of Lovett's testimony, I am persuaded his testimony where contradicted or unsubstantiated is unworthy of belief. Lovett acknowledged he may have admitted to Employee Relations Manager Sego that he threatened Beck and Hodges with violence. The Act does not protect employees from their own misconduct and insubordination. The Board, as noted *supra*, has frequently held that if an employee provides an employer with sufficient cause for discharge or, as in this case, suspension for which he would have been terminated or suspended in any event, the employee's discharge or suspension cannot be held unlawful merely because the employee had previously engaged in union activity. The Respondent cannot be faulted for attempting as it were to "nip in the bud" such potential violence by a person who has expressed an inclination towards it. See *Acrylic Optics Corporation*, 222 NLRB 1105, 1106 (1976).

There is no credible evidence Respondent through Finishing Process Control Engineer Beck in returning the timecards to the timecard rack in alphabetical order was attempting to set Lovett up for suspension or discharge. Beck, based on his testimony which I credit, was returning the cards to the rack in the location for the first time ever and was merely placing them back in the timecard rack in alphabetical order. Further, Beck even attempted to apologize to Lovett the following workday for any confusion that may have resulted from his not having known a different order in which to replace the cards other than by where the employee's name was listed for the card to be. It is without dispute that the timecard incident gave rise to the meeting at which Lovett made the threats in question. The factor of what brought about the meeting, however, fades in importance when considered in the light of Lovett's defiant and threatening conduct. Even Lovett's long length of acceptable service to Respondent can add little in evaluating Respondent's motivation under the circumstances of this case. In normal circumstances, an employer absent a discriminatory motive might well be reluctant to dismiss a long-term employee. However, toleration of grave threats such as Lovett's could only be carried so far. Although it is not my function to determine whether discipline is severe or not, I do find it could be looked at as one of many circumstances to make a determination with respect to Respondent's motivation. However, in the instant case Respondent's discipline of Lovett would appear to be in keeping with the conduct of Lovett. Therefore, an inference of an improper motive cannot be drawn therefrom.

I therefore conclude and find that the 3-day suspension of employee Lovett was brought about by his having made threatening comments regarding Respondent's management personnel. Accordingly, I find no violation of Section 8(a)(3) and (1) of the Act in Lovett's suspension from on or about April 29 to on or about May 1, 1980.

6. The alleged denial of access to the plant premises

The General Counsel at paragraph 15 of the complaint in Case 10-CA-15752 alleges that Respondent acting through Plant Manager Van Cochran on or about April 9, 1980, in and about the vicinity of its plant, prohibited access to the plant premises to employees who engaged in protected concerted activity in violatin of Section 8(a)(1) of the Act.

Counsel for the General Counsel relied on the testimony of employees Ronnie Bennett, James A. White, and Donald Tidwell to establish the alleged violations.

Employee Ronnie Bennett testified he asked Employee Relations Manager James Sego on April 8, 1980, where at Respondent's location would it be legal for him to pass out union leaflets. Bennett asked Sego at the request of one of the union organizers. Bennett was told by Sego he could pass out union leaflets on his own time in the break area. Bennett then asked Sego what about the parking lot because employees had passed out leaflets the night before and the security guards at Respondent had seen them but did not say anything to them; whereas the employees passing out literature on the day shift had "gotten picked on" by the guards. According to Bennett, Sego told him Respondent had made a mistake on that particular incident.

Employee Tidwell testified he handbilled at Respondent's plant on various occasions and did so specifically on April 9, 1980. Tidwell along with his wife and approximately 15 other of the union organizers went to Respondent's parking lot at approximately 7:30 a.m. at the gate where employees go in to pass out literature. Bennett along with the others started handbilling and at that point Respondent plant guard Juan Bargus came from the guard gate to where he and his wife were walking in the direction of the guard gate and yelled, "You all put those things back in your car." According to Bennett, his wife told the guard they had a right to pass out the literature until time to clock in for work. The guard then told Bennett's wife in Bennett's presence, "Lady, if you don't put those things back in your car right now . . . you won't live to work today. He said, I'll call the sheriff." Bennett and his wife put the handbills back in their car and came back up to the gate to go to work. Respondent guard Bargus told Bennett, "The ones I saw handing out leaflets stand right here." Bennett and the others who had been involved in the handbilling stood to the side of the gate, the shift changed, and the guard then told them they could leave. Bonnie Jilcott, one of those handbilling, asked the guard which way they could go, whether into work or not. The guard responded, "No, y'all go off the company property." Bennett testi-

fied those who had been handbilling proceeded back to the public road where Union Representative Rita Ernst was waiting. Ernst instructed Bennett and the others to find out if they were fired. Bennett asked the guard if they were fired, and the guard responded "Mr. Van Cochran was checking to see what he could do with us."

According to Bennett, a few minutes passed and then Plant Manager Van Cochran came from his office to the back of some cars at the parking lot outside the office. The guard proceeded over where Cochran was and it appeared Cochran and the guard had a conversation. The guard then returned to where Bennett was. Bennett stated those who had been detained were then allowed to go to work.

Employee loom fixer James A. White corroborated the testimony of Tidwell in all essential points.

Plant Manager Cochran testified he received a call from the security guard at the gate of Respondent's plant on April 9, 1980, regarding the activities of employees in the parking lot. According to Van Cochran, the call was from plant guard Juan Bargus who told Cochran some employees were passing out leaflets at the walk-through gate and asked what should he do about it. Van Cochran told Bargus he would call him right back. Cochran testified he called Bargus back in about 5 minutes or less and told him that employees could pass out leaflets at the entrance as long as they did not block it, but, if they blocked the entrance, they would have to move out of the way. Cochran denied going outside to speak with the security guard at the guard shack.

It is undisputed on this record that Respondent plant guard Bargus prohibited employees from distributing literature and for at least a period of time denied the employees distributing the literature access to the plant property either to distribute the literature or to go to work. I conclude and find guard Bargus did so at the behest of Plant Manager Cochran. I am inclined to and do credit the corroborated testimony of Tidwell that Cochran came outside the plant and spoke with the plant guard at the time the employees were prohibited from passing out literature and being denied access to the plant. I do so not only for the reason that Tidwell's testimony in this respect is corroborated by Bennett, but I further do so based on the fact that Respondent did not call plant guard Bargus as a witness, nor did Respondent make any attempt to show that Bargus was no longer employed by or unavailable to the Respondent. Plant guard Bargus was the one witness who could have corroborated Plant Manager Cochran's testimony. Bargus was clearly a witness within the direct control of Respondent and as such I conclude that, if plant guard Bargus had been called, he would have testified unfavorably to Respondent in this particular aspect of the case. An inference adverse to the party who fails to call witnesses otherwise available to it or neglects to explain the failure to call such witnesses has been established law since the early days of the Board. *Freuhauf Trailer Company*, 1 NLRB 68 (1935), reversed 85 F.2d 391 (6th Cir. 1936); 301 U.S. 49 (1937), reversing circuit and enforcing the Board. See also *Martin Luther King, Sr. Nursing Center*, 231 NLRB 15 (1977). Assuming *arguendo*, that Cochran did not appear outside the plant, it was at his direction that employees were for a period of time prohibited access to the plant premises and precluded from distributing their union literature at Respondent's premises.

I therefore conclude and find that Respondent through Plant Manager Cochran on or about April 9, 1980, prohibited access to the plant premises to employees who engaged in protected concerted activity as alleged in paragraph 15 of the complaint in Case 10-CA-15752 and in so doing violated Section 8(a)(1) of the Act.

7. The alleged warning and subsequent discharge of employee Donald Dean Tidwell

The General Counsel alleges at paragraph 16 of the complaint in Case 10-CA-15752 that Respondent on or about April 9, 1980, issued a warning to its employee Donald Dean Tidwell because of his membership in and activities on behalf of the Union and because he engaged in concerted protected activities. The General Counsel further alleges at paragraph 19 of the complaint in Case 10-CA-16016 that Respondent discharged and thereafter failed and refused to reinstate Tidwell because of his membership in and activities on behalf of the Union and because he engaged in protected concerted activity and because he gave testimony to the Board in Case 10-CA-15752.

Respondent admitted issuing a warning to Tidwell on April 9, and discharging him on June 12, 1980, but contended it did so for good cause.

Donald Dean Tidwell commenced work for Respondnet in May 1972 and was employed there until June 12, 1980. Tidwell's most recent job was that of a loom fixer under the supervision of Collis Adams. Tidwell became aware of the union campaign at Respondent when he was approached by fellow employee Warren in September 1979. Warren asked Tidwell if he would be interested in talking to the employees about starting a union at Respondent. Tidwell attended union meetings, handed out union cards, talked to fellow employees about the Union, had union meetings at his home, and wore a union badge. Tidwell handbilled at Respondent on March 30 and 31, 1980, and was observed handbilling by Weaving Superintendent Lewis and Textile Superintendent B. J. Armistead. As is set forth elsewhere in this Decision, Finishing Process Control Engineer Beck inquired of Tidwell regarding rumors at the plant and asked Tidwell if the employees were fixing to bring a union in at Respondent. Additionally, Tidwell along with others was prohibited access to the plant premises by Plant Manager Cochran on April 9, 1980.

Tidwell testified he commenced working on a loom on April 9, 1980. Approximately 15 to 20 minutes after he commenced work, Process Control Engineer Dixon walked by where he was working. Additionally, Weaving Superintendent Lewis came by where Tidwell was performing his work and walked around the loom observing the work Tidwell was doing. According to Tidwell, Process Control Engineer Dixon passed by where he was working again that morning. Sometime thereafter Tidwell's immediate supervisor, Maintenance Supervisor Collis Adams, came by and asked Tidwell if he had cov-

ered the loom while he was pulling maintenance on it. Tidwell told Adams no, he had not, that nobody had been covering the lino looms when they pulled maintenance on them. Adams told Tidwell that Process Control Engineer Dixon had a warning for him (Tidwell) in the office. Tidwell met in Dixon's office with Adams and Dixon.

According to Tidwell, Dixon informed him Weaving Superintendent Lewis had stated there was an employee pulling maintenance on a lino loom without covering it. Tidwell told Dixon nobody covered the lino looms when they pulled maintenance on them. Dixon told Tidwell he had a written warning for him and asked if he would sign it. Tidwell told Dixon he would not, but if Dixon would bring in the rest of the people who had been pulling maintenance on lino looms and not covering them and have them sign a warning, then he too would sign one.

Tidwell testified he had been servicing lino looms since November 1979, that he had serviced approximately 100 to 120 during that period of time and that he had never covered any of them. Tidwell testified supervisors had seen him doing this and he had never been issued a warning before.[18] In response to questioning by the General Counsel, Tidwell stated he had never been told to cover lino looms when working on them. Tidwell did acknowledge employees had always covered the flat weave looms.

Tidwell stated flat weave looms produced solid sheets of material which would be damaged if soiled, while the lino weave produced a fish net type material in which cleaning material or oil if spilled on it would pass on through.

On cross-examination Tidwell acknowledged that Process Control Engineer Dixon may have told loom fixers to cover the looms in April 1979. Tidwell acknowledged he had told the Board in his pretrial affidavit that Dixon had told loom fixers to cover the looms. Tidwell stated he did not commence work on lino looms until November 1979, and that no one had ever told him to cover lino looms. Tidwell testified that, in servicing or performing maintenance on the looms, the loom fixers used oil and cleaning solvents among other material. Tidwell acknowledged that any spill of oil or cleaning solvent onto the lino type fabric would go through the roll as opposed to remaining on the top of the tighter fabric of the flat weave.

Maintenance Supervisor Collis Adams testified he was in charge of the maintenance and cleaning of looms at Respondent, and he had always required the fabric to be covered while the the loom was being cleaned and he had done so ever since he had been in charge of maintenance, which had been a year and a half. Adams stated it was necessary for the fabric to be covered because the cleaning ingredients and the oil and grease from the machine would go into the fabric and the fabric would be ruined when it was put into the oven. Adams testified the material from both types of weave was placed in ovens in order to affix purchaser labels to the sacks. Adams further testified Tidwell had cleaned six looms between the dates of January 1 and June 10, 1980. Adams knew of no occasion prior to April 9, 1980, when employee Tidwell had cleaned a loom without first covering the fabric. In fact, Adams stated to his recollection he had never seen anyone perform maintenance on looms without covering the fabric. Adams testified the lino weave was more easily soiled than the flat weave because the lino weave was a more open weave and any substance spilled on it such as oil or cleaning solvent could more easily proceed through various levels of the fabric and go deep into the cloth. Adams testified the lino weave material was used to bag oranges, apples, grapefruits, tangerines, onions, and the like for shipment. According to Adams, dirty fabric was not the problem with respect to the bags or sacks, but rather the fact that, when the cleaning substance, oil, or solvent got on the material, it caused holes to burn in the fabric when placed in the oven and as such made the material unacceptable for the shipment of oranges, apples, and the like. Adams stated cleaning solvent was placed on the machines and then blown off with an airhose, thus causing the cleaning solvent to spread over an area within the range of the blow of the airhose.

Loom fixer Jerry Harris testified he had worked for Respondent for approximately 10 years and except for 3 months of that time he worked in the capacity of a loom fixer. Harris testified it was standard procedure ever since he had been at Respondent's plant to cover the fabric when working on a loom. Harris testified the failure to do so resulted in wasted fabric. Loom fixer Monroe Stone testified he had worked for Respondent for 5 years and it was standard procedure to cover the fabric when loom fixers were working on a loom. Maintenance Puller Allen Summerlin testified he had worked for Respondent for approximately 9 years and Respondent had a rule that, if you were going to pull maintenance on a loom, you had to cover up the material. Loom fixer Gary Rooks testified he was a 9-year employee of Respondent and it was standard procedure at Respondent when pulling maintenance on a loom to cover the material, otherwise the cloth would be ruined.

Respondent contends Tidwell was warned on April 9, 1980, for not covering the fabric on a loom which was a requirement of Respondent as evidenced by work rule 3 of its plant rules which pertained to employees refusing to follow work instructions. Respondent further contends the General Counsel failed to establish a *prima facie* case herein and that the allegation should be dismissed. Respondent further contends that even assuming *arguendo* a *prima facie* case had been established, Respondent had shown it would have disciplined Tidwell even in the absence of his union activity, and thus the allegation must fail.

The essential elements of a *prima facie* case with respect to Tidwell's warning on April 9, 1980, have been established. It is clear Tidwell had engaged in union activities, Respondent was fully aware of these activities, and he was disciplined. Further, the timing of the discipline certainly raises suspect with respect to the motivation of the action taken by Respondent. There can be no

[18] Tidwell testified Dixon told him this was his second warning, that he had a warning in January 1980, and that, if there were a next occasion, he would be terminated.

question but that General Counsel has established a *prima facie* showing sufficient to support an inference that protected conduct was a motivating factor in Respondent's decision. The burden then shifted to Respondent to demonstrate that the same action would have taken place even in the absence of protected conduct. *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

I conclude and find that Respondent has satisfied that burden. It is undisputed that Tidwell performed maintenance on a loom without covering the fabric. Tidwell contends he did not know of a requirement to cover the lino fabric. Tidwell further indicated he had performed hundreds of maintenance actions on looms and had not covered them and had done so with the knowledge of Respondent's supervision. I simply find Tidwell's contentions unbelievable. The evidence is rather overwhelming that Respondent required the looms to be covered when maintenance was being performed. Even Tidwell himself acknowledged he might have been told of such a requirement a year earlier than the incident herein. The evidence is very persuasive that Respondent had valid reasons for requiring the covering of the fabric. Respondent had a rule requiring the following of work instructions and as evidenced by Resp. Exh. 35 employees such as Lonnie L. Harnage had been disciplined for among other reasons "failing to follow specific instructions to cover the press roll on loom 6739" on October 26, 1979. Additionally, employees Eddie Perkins and Larry Cornelius (Resp. Exhs. 45 and 39) had been previously discharged for not following work instructions.

Based on the foregoing, I am persuaded that the complaint with respect to Respondent having unlawfully issued a warning to Tidwell on April 9, 1980, must be dismissed.

Tidwell testified he was discharged on June 12, 1980. Tidwell stated that on the morning of June 11, 1980, when he reported for work, his supervisor, Adams, informed him the loom he had worked on the day before had been found leaking oil. The loom number in question was loom 552. Adams informed Tidwell the leak had been found the night Tidwell worked on the loom around shift change time, and that he, Adams, did not know what would be done with respect to it. Tidwell proceeded to pull maintenance on another loom when Maintenance Supervisor Adams came to him and asked him to go to the office. Tidwell and Adams went to Process Control Engineer Dixon's office.

Dixon told Tidwell they had found the loom he had worked on the night before leaking oil and he was being sent home until Respondent had an opportunity to investigate the situation. According to Tidwell, he received a warning and went home. Tidwell was told to report to work at 8 o'clock the next day.

Tidwell could not locate his timecard when he arrived at work the next day and inquired of Adams about the card. Tidwell was told by Adams that Weaving Superintendent Lewis had instructed that the timecard be pulled and that Lewis would later speak with Tidwell. After a wait of 30 minutes or more, Tidwell met with Lewis. While waiting to meet with Lewis, Tidwell had asked Process Control Engineer Dixon if he could have a witness with him and Dixon told him no. Lewis told Tidwell he supposed Maintenance Supervisor Adams and Process Control Engineer Dixon had gone over with him what had happened. Tidwell stated they had. Lewis then informed Tidwell he was going to have to let him go. Tidwell protested saying someone else had messed up the loom after he left. Weaving Superintendent Lewis told Tidwell Respondent had investigated it and no one else had messed with the loom, and, according to Tidwell, Lewis further told him his work had been so poor lately they were going to have to let him go.

Tidwell explained that to check for an oil leak on a loom the inspection plate must be taken off the front of the loom, make a visual inspection of the loom, replace the inspection plate, take a paper towel and wipe the plate clean, and, according to Tidwell, if there is a leak, it will show up. Tidwell testified he did this procedure twice on loom 552 on the night he repaired it. Tidwell testified he could tell someone else had worked on the loom other than himself because he saw permatex on the loom. He described permatex as a liquid gasket sealer. Tidwell discussed the permatex with employee Darrel Mathis, who was a loom fixer. According to Tidwell, Mathis told him the only thing he found wrong with loom 552 was three allen-type screws needed tightening on the bottom of the loom. Tidwell stated he asked Mathis if he put permatex on the machine, and Mathis told him no, that all he did was tighten up the three screws.[19]

Maintenance Supervisor Adams testified that on June 11, 1980, Tidwell performed regular routine maintenance on loom 552. According to Adams, the maintenance Tidwell pulled was of the type he did every day on weave machines. Adams testified that on some occasions Tidwell did not have to go into the lower housing on a machine, but that on the particular occasion in question Tidwell had to in order to set some lifters and openers in the heighth and lowness of the shuttle lifter. Adams testified that when the inspection plate cover was placed back on the outer housing, the screws were left finger loose on the inspection cover which resulted in all of the oil draining from the machine. The leak was discovered on the evening shift. According to Adams, the machine had run for about 7 to 7-1/2 hours when discovered and the leaking oil had run underneath the fabric and underneath the loom. If the machine leak had not been discovered and the loose plate not tightened, the damage to the machine would have been approximately $8,000 to $10,000, according to Adams.

Weaving Superintendent Lewis approved the recommendation that Tidwell be terminated on June 12, 1980,

[19] Tidwell testified that as he was on his way out of the plant at the time he was sent home by Respondent, he had a chance meeting with fellow employee Wayne Bennett, who asked why he was going home. Tidwell told Bennett he was being sent home because of an oil leak. Bennett told Tidwell to look at the oil leak on the loom. According to Tidwell, Bennett had informed Process Control Engineer Dixon about the leak. Bennett had determined that employee Randy Noll was responsible for working on the particular loom that was leaking. Bennett told Tidwell that Dixon had informed him that nothing could be done about proving who had done it, to just tighten up the bolts. Tidwell testified employee Randy Noll did not wear a union button.

because of what he considered to be poor job performance with a potential of several thousand dollars damage. Lewis testified he based his poor job performance assessment on the fact Tidwell had pulled routine maintenance on the loom and left the inspection cover loose causing the oil to leak from the machine, which leak was readily discovered by the fixer on the oncoming shift.

Respondent contends its normal progressive disciplinary procedure was followed with respect to employee Tidwell. Tidwell had been disciplined in January 1980 for absenteeism. The evidence indicated another loom fixer had received the same discipline for the same misconduct. Tidwell then received a warning on April 9, 1980, for failure to follow instructions. The third incident then resulted in the discharge of Tidwell on June 12, 1980, for poor work performance. Respondent contends Tidwell was not the subject of any disparate treatment. Respondent's counsel contends there can be no question but that an employer has the right to demand satisfactory work performance from its employees and that, when unsatisfactory work can potentially result in extensive damage, an employer is justified in imposing discipline. Respondent cited *Klate Holt Company*, 161 NLRB 1606 (1966), wherein the Board held: "If an employee provides an employer with a sufficient cause for his dismissal by engaging in conduct for which he would have been terminated in any event, and the employer discharges him for that reason, the circumstance that the employer welcomed the opportunity to discharge does not make it discriminatory and therefore unlawful." Respondent's counsel contends counsel for the General Counsel failed to even establish a *prima facie* case with respect to the discharge of employee Tidwell.

As set forth *supra*, I conclude counsel for the General Counsel established a *prima facie* case with respect to the warning given to Tidwell on April 9, 1980. I consider that same evidence to constitute a *prima facie* case with respect to Tidwell's discharge such as would require Respondent to demonstrate the same action would have taken place against Tidwell in the absence of his protected conduct.

I am persuaded Respondent met its burden. Tidwell did not deny having performed maintenance on loom 552 on the night in question. He rather attempted to shift the responsibility for the leak caused by the loose inspection plate cover to someone having worked on the loom after he completed his work on it. I find such evidence unpersuasive.

The General Counsel did not call Wayne Bennett as a witness even though employee Tidwell indicated Bennett had knowledge of other looms leaking with Respondent's knowledge without employees being disciplined.[20] I am persuaded Respondent followed its normal progressive disciplinary procedures with respect to Tidwell, that it did not treat him differently from other employees, and it demonstrated it would have discharged Tidwell even in the absence of his protected conduct.

I therefore recommend that portion of the complaint in Case 10-CA-16016 which alleges Respondent unlawfully discharged Donald Dean Tidwell on June 12, 1980, be dismissed in its entirety. Further, I find the record evidence does not support a finding that Respondent discharged Tidwell because he gave testimony to the Board in Case 10-CA-15752. I therefore also recommend dismissal of that portion of the complaint in Case 10-CA-16016 which alleged a violation of Section 8(a)(4) of the Act in the discharge of Tidwell.

C. *The Alleged Violations in Case 10-CA-16016*

1. Alleged interrogation

The General Counsel alleges at paragraph 7 of the complaint in Case 10-CA-16016 that on or about specified dates between March 31 and April 15, 1980, in and about the vicinity of its plant, Respondent by its supervisors and agents, Supervisor Lynn Duck, Weaving Shift Supervisor Howard Bennett, and Extrusion Shift B Supervisor Peter Peterson, interrogated employees concerning their union membership, activities, and desires in violation of Section 8(a)(1) of the Act.

Counsel for the General Counsel relied on the testimony of employees Clemenstine Hendley, Elijah Bailey III, Kenneth Locklear, and James Frye to establish the violations alleged.

Elijah Bailey III testified he was an employee of Respondent and learned of the union campaign at Respondent on April 1, 1980. After learning of the union campaign, Bailey passed out union leaflets in the plant parking lot, attempted to sign up employees at break time, attended union meetings, went to meetings of the Union held in employees' homes, and attempted to talk to employees about joining the Union. From April 9, 1980, until about the last of June 1980, Bailey wore a union button to work every day. On April 8 Bailey had a conversation alone with Supervisor Lynn Duck in Duck's office. Bailey testified he had gone to Duck's office to pick up money he had won in a fishing tournament and, while he was in Duck's office, Duck told him he had something he wanted to ask him. Duck told Bailey:

> He asked me how I felt about the Union, and I told him I was all for it, and he told me that the Union consists of organized crime, and the only way the Union could survive was by the members paying union dues, and said if you sign the committee card, ain't no way for you to get out of the Union. If you have a problem or anything, you can't go to your supervisor. You had to go to the Union, and he said some more things. I told him I didn't know that much about the Union, that I was going to a meeting that afternoon when we got off from work.

Former employee James Frye testified he had a conversation with Supervisor Duck at the end of the work line the second week of April 1980. No one was present other than Duck and Frye. According to Frye, Duck asked how he was doing and then stated, "James, how do you feel about the Union?" Frye replied he did not know. Duck then told Frye the Union was no good, that you had to pay dues and they just take your money and

[20] In this same respect, the General Counsel did not call Darrel Mathis as a witness.

the Union does not have many benefits like the Respondent did.

Supervisor Duck testified he had a conversation with Bailey at the time when Bailey came by his office to claim half of the prize money for the largest bass being caught in a fishing tournament certain of the employees had attended. Duck told Bailey he wanted Bailey to hear both sides of the story regarding the Union. Duck then told Bailey what he thought about the Union. Duck asked Bailey to look at both sides and make sure he heard from both and then he could make his own decision. Duck testified he had associated with Bailey and other employees away from the plant on such activities as fishing and scouting for places to deer hunt. Duck admitted he asked Bailey how he [Bailey] felt about the Union, but he believed the date of his inquiry was a day or so later than Bailey had indicated. Duck denied he asked former employee Frye how he felt about the Union.

I find that Respondent through Supervisor Duck interrogated employees concerning their union activities on April 8 and 15, 1980. Duck readily admits asking employee Bailey how he felt about the Union on April 8 and, although Duck generally impressed me as a credible witness, I find he either failed to remember or misstated the facts when he denied he asked employee James Frye how he felt about the Union, and as such I discredit Duck's denial. I find such conduct of Respondent violated Section 8(a)(1) of the Act as alleged at paragraph 7 of the complaint in Case 10-CA-16016. I further conclude and find that Duck's comments to Bailey about employees being unable to go to their supervisor with problems constituted a threat to employees in violation of Section 8(a)(1) of the Act as alleged at paragraph 9 of the complaint in Case 10-CA-16016.

I reject what seems to be an apparent contention of Respondent that because Duck and Bailey were socially good acquaintances, the actions of Duck would not constitute unlawful conduct. There is no procedure whereby unlawful coercive interrogation can be converted to lawful conduct premised on the fact the individuals in question were personal friends. See *Mayfield's Dairy Farms, Inc.*, 225 NLRB 1017 (1976).

Clemenstine Hendley testified her supervisor was Howard Bennett. Hendley became aware of union activities at Respondent during the last week in March. Hendly attended approximately 11 or 12 union meetings, talked to employees about joining the Union, wore a union button, and signed a union card. Hendley testified that she was at her machine at the burling table the last week of March 1980 when her supervisor, Bennett, came to Hendley and told her he wanted to talk to her. Hendley asked Bennett if it was about the Union, and Bennett said it was. Bennett asked Hendley how she felt about the Union. Hendley told Bennett she had not make up her mind at that time, but when she did she would let him know. Hendley told Bennett she had 8 years' working experience under the AFL-CIO in piecework, but she did not know how it would differ in a place like Respondent's plant, that she needed to know more about the Union. Bennett asked her how she was going to learn more about the Union, by going to a particular fellow employee? Hendley informed Bennett she would go to union meetings to find out more about the Union. Bennett told Hendley he wanted to ask her some questions, so Hendley asked that he give her time to get a card and write down what he said. Bennett then told Hendley, "The way I understand it, you can't go to your supervisor with your personal problems like you talk them over with me now." Hendley told Bennett she did not know about that. Bennett then told Hendley about an employee at Weyerhauser Company who was working to pay for a truck and that a strike was called for by a union, and the truck was burned. Bennett told Hendley unions were really a form of organized crime.

Weaving Shift Supervisor Bennett testified he had a conversation with Hendley at her work station either at the end of March or the beginning of April 1980. Bennett stated he told Hendley he wanted to talk to her about the Union. According to Bennett, Hendley shut her machine off, sat down, and told him, "Let's talk." Bennett testified, "I told her about an employee that we had working for us by the name of John Bryce, that he had a tractor trailer truck and he used to haul chips for Weyerhauser Company in Adel, Georgia. They were unionized. Weyerhauser had been on strike for 6 months and during this time he could not make the payments on his truck and he lost it." Bennett testified this conversation with Hendley took place before employees passed out union leaflets at the plant. Bennett denied he stated the Weyerhauser employee's truck had been burned and he further denied telling Hendley that if the Union came in, she could not go to her supervisor with her problems.

Although employee Hendley did not appear at all times to have a real grasp of all of the facts of a particular situation, I nonetheless conclude, based on my observation of her testimony, that her testimony is worthy of belief. I credit Hendley's testimony with respect to the conversation between Weaving Shift Supervisor Bennett and herself which took place on or about March 31, 1980. I specifically discredit Bennett's testimony where it is contradicted by employee Hendley. Accordingly, I find Respondent unlawfully interrogated its employees concerning their union membership, activities, and desires as alleged at paragraph 7 of the complaint in Case 10-CA-16016, and further find that Respondent through Bennett threatened employees they would not be able to take grievances to their supervisor if they selected the Union as their collective-bargaining agent as alleged at paragraph 9 of the complaint in Case 10-CA-16016.

Kenneth Locklear testified he became aware of the union organizational activities at Respondent around April 8, 1980. After learning of the Union he talked to employees about signing cards, signed the committee sheet which later became a union leaflet, went to meetings of the Union held in employees' homes; and from April 8 until he lost his union button, he wore it at work. Locklear testified he had a conversation with Extrusion Supervisor Peter Peterson around the last part of April 1980. The conversation took place in the extrusion office where Locklear and Peterson were alone. Locklear testified Peterson "asked me why I was taking notes on the job, and I told him I had to because I felt my rights

were being misused. And he asked me why did people out there think they needed a union." Locklear told Peterson it was not because of money but for better working conditions.

Peterson acknowledged having a conversation with Locklear about the Union and also stated he was aware Locklear wore a union button at the plant. Peterson denied asking Locklear why employees felt they needed a union.

After carefully observing both Locklear and Peterson testify, and giving consideration to the fact that Peterson discussed the Union with Locklear and other employees, and the fact that Locklear wore a union button, I am persuaded and find Peterson did in fact ask Locklear why employees felt they needed a union and as such unlawfully interrogated him concerning his union membership, activities, and desires in violation of Section 8(a)(1) of the Act as alleged at paragraph 7 of the complaint in Case 10-CA-16016.

2. Alleged threats of discharge

The General Counsel at paragraph 8 of the complaint in Case 10-CA-16016 alleged Respondent acting through Extrusion Supervisor Peter Peterson and Third-Shift Superintendent Gene Williams on or about April 15 and 28, 1980, respectively, in and about the vicinity of its plant, threatened its employees with discharge if they joined or engaged in activities on behalf of the Union.

Counsel for the General Counsel relied on the testimony of employee Joan Foxworth and former employee James Frye to establish the violations alleged.

Former employee James Frye testified he had a conversation in the third week of April 1980 with Extrusion Supervisor Peterson in Peterson's office. Frye testified the conversation came about because he had asked to speak with Peterson about obtaining some time off to travel to Florida to see his mother. Peterson told Frye it was all right for him to go to Florida, that he would get someone to work in his place. Peterson then told Frye he had something he wanted to talk to him about. Peterson then asked Frye how he felt about the Union. Frye told Peterson he did not know. Peterson stated he knew of a union trying to get in somewhere in Adel, Georgia, and that it was unable to do so. Peterson told Frye that, when the union failed to get in at the place he was talking about, most of the employees who were working for the union got laid off or discharged.

Peterson acknowledged he had a conversation with Frye on or about the date indicated. Peterson stated he brought the subject matter of the Union up with Frye because there had been a lot of talk about the Union, and he wanted to tell Frye a few things about it, that is, Peterson wanted to express to Frye his personal opinion about the Union. Peterson told Frye the Union would not be good for Respondent, specifically the employees. Peterson continued, "And I told him job security came from competitive organization and that came from not having strikes. And I said unions now are big business, and they're kind of looking for—they're not looking out for the little guy like they used to. And I asked him if he could visualize for himself on a strike—being on a strike without getting any money." Peterson also told Frye he had heard about a strike at the Weyerhauser Company. Peterson denied he asked Frye how he felt about the Union. Peterson stated he had never seen Frye wear a union button.

Respondent contends Frye's testimony should be discredited because neither Peterson nor a fellow coworker, Tim Roberts, had ever seen Frye wear a union button. Further, Respondent contends that, even if Frye's testimony is credited, it is nothing more than a lawful comment which would be protected under the free speech proviso of Section 8(c) of the Act.

I credit Frye's testimony with respect to the conversation with Peterson which each acknowledged was about the Union. I conclude and find the comments of Peterson constituted a threat of discharge to employees if they joined or engaged in activities on behalf of the Union as alleged in paragraph 8 of the complaint in Case 10-CA-16016 as those allegations relate to Extrusion Supervisor Peterson.

Joan Foxworth testified she was an employee of Respondent and became aware of the union campaign at Respondent about the last week in March 1980. Foxworth attended union meetings, wore a union committee button, signed a union card, and attempted to get other employees to sign cards for the Union. Foxworth testified that starting the second week in April and thereafter for the next 2 months she wore her union button to work everyday. Foxworth testified she received a disciplinary warning from Respondent after she commenced to wear a union button. Foxworth testified her warning was for talking to a fellow employee about the Union on the job. Foxworth received her warning in April 1980.

Foxworth testified that, prior to her receiving the warning, she had gone to fellow employee Eileen Carver's work machine. Foxworth testified she was helping Carver weave when Debbie Barrett came up to the loom where they were and started a conversation by talking about Foxworth's hair. According to Foxworth, Eileen Carver walked off, and Barrett then asked Foxworth if the union people were going to be at the end of the road that day. Foxworth told Barrett she guessed they would, but she could not talk to her about it then, that she would have to talk about it after work. According to Foxworth, Barrett said agreed and went her way. According to Foxworth, Barrett started the conversation.

Foxworth stated she went about her job for a couple of hours and then her supervisor, Wilma Lane, came to her and told her to report to the office. Foxworth stated when she got to the office Weaving Shift Supervisor Barbara Walker and Third-Shift Superintendent Gene Williams were there. According to Foxworth, Williams told her he was giving her a written warning "on account of Debbie said I was talking to her on her job about the Union . . . ." Foxworth told Williams that Barrett was a liar and, if he would go and get her, she would tell Barrett to her face that she was a liar. Foxworth told Williams she was not going to sign a damn warning. Williams told Foxworth that it did not matter whether she signed the warning or not. Foxworth told Williams the reason she was getting the warning was because whe was wearing a committee button and Barrett

was not. According to Foxworth, Williams then stated she could be fired if it happened again. Foxworth testified that Barrett told her a couple of weeks later that she [Barrett] did not receive a warning for the conversation she had with Foxworth.

Charles Alton Carver, the husband of Eileen Carver, testified he had seen Debbie Barrett wandering from machine to machine at the plant and had seen her talk to Joan Foxworth and his wife while they were working at their machines. He placed the date as either the first week or the beginning of the second week of March 1980. Mr. Carver testified he could not hear any of the conversations among Foxworth, his wife, and Barrett. Carver testified that after a while Barrett came by where he was and stated to him that she was going to the weave room office and get Ms. Carver and Joan Foxworth in trouble because they jumped onto her about the Union. Later that same day Foxworth came crying by where Mr. Carver was and said she had gotten "a damn warning." Carver testified Respondent's policy regarding talking on the job was that "you were not supposed to talk."

Debbie Ann Barrett worked in the weaving department at Respondent along with employees Joan Foxworth and Eileen Carver. Barrett testified she talked to her supervisor regarding employee Foxworth bothering her about joining the Union. Barrett requested of supervision that they require Foxworth to stop bothering her. Barrett made her complaint to Weaving Shift Supervisor Walker and Third-Shift Superintendent Williams. Barrett told Williams and Walker that Foxworth was bothering her in the bathroom and on the job, but that she did not tell them Foxworth was bothering her on the porch, although in fact she had been. Barrett testified Foxworth had bothered her on several occasions. Barrett denied ever starting a conversation with Foxworth about the Union while on the job. Barrett stated she never at any time went to Eileen Carver's work station to talk to her about the Union or anything else. Barrett wore a paper button with a slogan on it, which was against the Union. Barrett testified that the place where Carver "jumped onto" her about the Union was in the bathroom. According to Barrett, Eileen Carver became very upset at her because she would not work to support the Union. Barrett stated that Third-Shift Superintendent Williams and Weaving Shift Supervisor Walker wrote out a statement setting forth her complaint against Foxworth and she signed it. Barrett testified she never had any conversation with Foxworth after Foxworth got a warning for bothering her. The only contact Barrett stated she had with Foxworth after the warning was that Foxworth, Eileen Carver, and other employees supporting the Union would come by her machine and laugh at her.

Weaving Shift Supervisor Barbara Walker testified she was present when Foxworth received a warning. Walker testified she first became aware of a problem when employee Kate Davis came to her during the work shift and told her Debbie Barrett was crying because Foxworth was harassing her and interfering with her job. Walker told Davis that Barrett would have to come to her personally, that she could not rely on someone else's word. Walker testified Barrett came to her office and told her that Foxworth was harassing her and interfering with her work. According to Walker, Barrett signed a statement that Foxworth was interfering with her work. As a result of the written statement by Barrett, Foxworth was given a disciplinary warning for interfering with the work of a fellow employee. Walker asked Foxworth what had happened at the time she gave Foxworth her warning. Walker acknowledged that at the time Foxworth was given a warning she was wearing a union button.

Third-Shift Superintendent Williams testified that Debbie Barrett had spoken with him concerning a fellow employee, Foxworth. Williams stated Barrett informed him Foxworth was bothering her while she was attempting to perform her job duties. Williams testified he had Foxworth come to his office, and the first thing Foxworth stated to him as she entered through the door was "she was not signing no goddamn warning. She made that statement several times before she had a seat." Williams explained to Foxworth this type conduct could not be tolerated, that what she did while on her breaks, in the restroom, or off the job, was up to her; but as long as employees were performing their work, he could not tolerate anyone, pro- or anti-union, interfering with a fellow employee's work performance. Williams informed Foxworth that if such conduct continued, further disciplinary action would be taken. Third-Shift Superintendent Williams testified he did not give Eileen Carver a warning at the time he did Foxworth because he had checked into the matter and found out the harassment Barrett complained of with respect to Carver had taken place in the restroom or in the break area. Williams considered that to be the employees' own time, and as such was not considered to be a distraction from the job of a fellow employee. Foxworth's disciplinary warning was given simply because she was interfering with a fellow employee's job performance during work time.

Respondent contends the General Counsel did not establish a *prima facie* case with respect to the disciplinary warning given to employee Foxworth. Respondent contends there has been no showing that Foxworth was subjected to disparate treatment. Respondent contends the record demonstrates that two union supporters, Foxworth and Carver, solicited a fellow employee to support the Union; however, one of those, Carver, limited her activities to nonwork time and was not disciplined, whereas Foxworth interfered with the work of another employee on work time and was disciplined.

I conclude and find that counsel for the General Counsel established a *prima facie* case with respect to the warning given Foxworth. Foxworth was a union supporter and by the nature of the discipline given her, Respondent was aware of her union sentiments. Therefore, I find the burden shifted to Respondent under the principles of *Wright Line, Inc., supra*, to demonstrate that the same action would have taken place even in the absence of the protected conduct. In the instant case with respect to this allegation the burden would be met if the Employer established that there was actual interference with production or maintenance of plant discipline.

I credit the testimony of Debbie Barrett that her work was interfered with by employee Foxworth. I specifically discredit Foxworth's testimony that it was Barrett who came to her machine and inquired about the Union. After careful observation of Foxworth's testimony, I have concluded it is unworthy of trust or belief in those instances where it was contradicted or unsubstantiated. I find Respondent met its burden of showing actual interference with plant production. The Respondent conducted an investigation into the facts and determined that production had been interfered with by employee Foxworth. Further, Respondent determined that one of the two individuals involved, i.e., Eileen Carver, had not interfered with production, but rather had confined her solicitations to nonwork time and as such she was not disciplined; therefore, it appears Respondent's motivation in disciplining Foxworth was solely based on maintaining plant production. In making my finding herein, I have fully considered that a delicate balance must be maintained between an employee's right to engage in organizational activity and an employer's responsibility for the maintenance of rules necessary to efficiently operate its plant. The Board in *Green Tree Electronics Corporation*, 176 NLRB 917 (1969), taught that this balance must be administered in a fashion insuring that reprisals are not taken against principal in-plant organizers where legitimate interests of employers are not involved. However, I am persuaded and find that Foxworth had interfered with the production of Respondent by disrupting the work of fellow employee Barrett, and as such I conclude and find Respondent did not violate the Act by issuing a written warning to employee Joan Foxworth on April 28, 1980, as alleged in paragraph 12 of the complaint in Case 10-CA-16016.[21]

3. Alleged prohibition against employees engaged in union activity during work time

The General Counsel alleges at paragraph 10 of the complaint in Case 10-CA-16016 that Respondent acting through its supervisor and agent Barbara Walker on or about April 10, 1980, in and about the vicinity of its plant, prohibited employees from engaging in activity on behalf of the Union during working time while permitting other employees to engage in antiunion activity during working time.

Weaving employee Charles Alton Carver testified he had a conversation with Supervisor E. L. Nelson in early April 1980 in which he asked Nelson if literature could be distributed on behalf of Respondent, why union members could not have the right. Nelson allegedly told Carver it would not be permitted. Carver testified he had a second conversation that same week with Nelson and in it he asked Nelson about antiunion slogans being placed on and around the plant by an employee, Jackie Glausier. Carver testified antiunion slogans were placed on small, round, yellow colored stick-on type pieces of paper which were the same type as those used by Respondent for placing the loom number, style, and width of cloth on material being used on the looms. According to Carver, these stick-on pieces of paper were maintained by the supervisors of Respondent. During that same period of time, Carver testified he saw employee Glausier placing those pieces of paper with antiunion slogans on them on "the chest or breasts of weavers." Carver testified Weaving Shift Supervisor Barbara Walker saw employee Glausier distributing the stickers and in fact was walking with him. According to Carver, Glausier was permitted to go from job to job and department to department to distribute the stickers. Carver again complained to Nelson. According to Carver, he continued to complain to Supervisor Nelson until the end of June 1980 when Glausier was stopped from going from department to department. Carver stated no other employees were permitted to go from department to department. Carver acknowledged that Supervisor Nelson told him it was wrong for the antiunion people to be permitted to give out literature or slogans, and told Carver he would take the matter up with Third-Shift Superintendent Williams.

Employee Jackie Glausier testified he passed out antiunion stickers during the month of April 1980, that he did so in the yard, parking lot, and breakroom areas, that he passed them out before working hours and after working hours, that he did not pass them out when employees were supposed to be working, nor did he give them to employees during the time they were working. Glausier testified he never passed out antiunion stickers in the plant other than in break areas. Glausier stated he obtained the pin-on antiunion slogans from fellow employee Minnie Benefield who bought the material, brought it to him, and he handwrote antiunion slogans on the pieces of paper. Glausier testified Weaving Shift Supervisor Walker never accompanied him when he passed out antiunion slogans except for the fact that she may have been in the breakroom area at a time when he was doing so. Glausier had obtained yellow stickers from the supervisors' office where, according to Glausier, anyone could obtain them. In fact, Glausier had previously obtained the stickers for his personal use, which was to utilize them for targets to sight in guns he used for target shooting. Glausier stated the little yellow stickers were just lying in the office for anyone's use and that everyone had access to the office to obtain the stickers.

Employee Minnie Benefield, a 9-year employee of Respondent, worked in the same department and on the same shift with Jackie Glausier. Benefield became aware of union activities at Respondent in April 1980 when some employees started wearing union buttons. Benefield stated she was not for the Union. Benefield wanted other employees to know she was not for the Union and as such she made from various colored construction paper small round shaped badges which she took to employee Glausier who printed anti-union slogans on them. Benefield also bought pins to affix the badges to employees' clothing from her own money. Benefield testified Glausier passed the pieces of paper out at the plant but never

[21] I further credit Third-Shift Superintendent Williams' testimony that he told Foxworth that should the incident reoccur, further disciplinary action could be taken. I specifically discredit Foxworth's testimony to the contrary. I find such a comment did not constitute a threat to discharge employees because they joined or engaged in activities on behalf of the Union as alleged at par. 8 of the complaint in Case 10-CA-16016 as it pertained to Third-Shift Superintendent Williams.

when employees were supposed to be working. Benefield said she did not read what Glausier wrote on the material she purchased for the antiunion slogans, "but my younguns did and my friends did because I don't have any education to read." Benefield helped pass out the antiunion slogans on the porch to the weave room at the plant but never when employees were working. Benefield testified that the little yellow stick-on identification labels for fabric were all over the weave room, that you could find them stuck on the floor, lying on machines, and all over the place. In fact, Benefield testified she wore one of the little yellow stickers with an antiunion slogan on it. She found the yellow sticker or label underneath her machine where she worked.

Weaving Shift Supervisor Walker testified she knew employee Jackie Glausier, but that he did not work directly for her but rather worked for Weaving Supervisor Terry Pilcher. Walker had never seen Glausier pass out yellow loom stickers with antiunion slogans on them. Further, Walker testified she never on any occasion accompanied employee Glausier as he walked through the weaving department. Walker testified she never at any time observed Glausier in her department putting yellow loom stickers with antiunion slogans on them on any of the weavers. Walker stated it simply did not occur.

Glausier and Benefield impressed me as credible witnesses and their testimony in all essential aspects was corroborated by Weaving Shift Supervisor Walker. I credit the testimony of Glausier, Benefield, and Walker, and in doing so I find the allegations alleged in paragraph 10 of the complaint in Case 10-CA-16016 as testified to by employee Carver simply never took place. I therefore recommend dismissal of paragraph 10 of the complaint in Case 10-CA-16016 in its entirety.

4. The warning issued to employee Kenneth R. Locklear

The General Counsel alleges at paragraph 11 of the complaint in Case 10-CA-16016 that Respondent on or about April 25, 1980, issued a written warning to its employee Kenneth R. Locklear because of his membership in and activities on behalf of the Union and because he engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

The Respondent admitted issuing a warning to Locklear on April 25, 1980, but asserted the warning was issued for good cause.

Employee Kenneth R. Locklear testified he became aware of the union campaign at Respondent around April 8, 1980. Locklear talked to fellow employees about signing cards for the Union, signed a committee sheet for the Union, attended meetings of the Union held in various employees' homes, and passed out union literature in the parking lot of Respondent. Locklear was one of the employees who passed out a union leaflet at the plant with a list of employees' names on it who supported the Union. (G.C. Exh. 3.) Locklear wore a union committee button every day from April 8, 1980, until he lost it. Locklear could not recall when he lost his union button. As is set forth elsewhere in this Decision, Extrusion Supervisor Peterson in the latter part of April 1980 asked Locklear why the employees felt they needed a union.

On April 25, 1980, Locklear testified he was in the department in which his wife worked at the plant near midnight and he was waiting for her to finish her work as he had usually done when a supervisor walked by and observed him being there. Locklear testified he had his union committee button on at the time and the supervisor looked at him and asked him what he was doing in that department. Locklear told the supervisor he was waiting for his wife to finish work so he could give her the keys to their home. According to Locklear, the supervisor told him he had no business in that particular department, for him to wait beside the clock or outside the door of the department. Locklear said the supervisor walked away "and I stood around for a minute to give her [his wife] the keys because she wasn't through with her job." Locklear testified the supervisor returned in approximately a minute and came back to where he was. Locklear then left the department, clocked in and went to his own department.

Approximately 10 to 15 minutes after Locklear had been on his job, Extrusion Supervisor Peterson came to him, took him to the office and told him he was going to be given a written warning for being in another department without permission from the department supervisor. Locklear told Peterson he had been going in that department every night he had worked the 12 p.m. to 8 a.m. shift and asked Peterson if the warning was because of his union button. Peterson told Locklear it was not because of his union button. Locklear told Peterson that there was another employee in the department that same night. Locklear stated the other employee was Elton Johnson. Locklear said he did not see anyone ask Johnson to leave. Locklear knew of other employees who had visited other departments without permission; namely, Walter Alexander and Gene Mapp.

Locklear testified the supervisor who asked him about his being in the department where his wife worked was Beaming Supervisor Rick Hingson. Locklear testified it would take probably 10 seconds to give his wife their house keys and leave. Locklear acknowledged that in his pre-trial affidavit given to the Board he had indicated that he had been in the beaming department for 5 minutes before Beaming Supervisor Hingson approached him. However, in testimony at the hearing he was not sure if it was 5 minutes or not. Locklear testified he arrived at the beaming department at approximately 15 minutes until midnight and he stated he clocked-in in his department at approximately 7 minutes until midnight, but 2 minutes of that time was spent walking between the beaming department where his wife worked and the department where he worked. Locklear testified he also saw Extrusion Shift Supervisor Dan Jones in the beaming department that night. Locklear observed Elton Johnson in the beaming department for a moment, but did not know how long he stayed in the department; however, Locklear said that Johnson could not have left before he did because there was no way for Johnson to leave the beaming department without his having seen

him leave. Locklear would estimate Johnson was in the beaming department for 10 minutes.

Locklear testified, with respect to employee Walter Alexander going to other departments, that he did not see him in any other department, but rather Alexander had told him at various times that he was going to visit his wife in another department. Locklear acknowledged on cross-examination that he had never seen Gene Mapp in another department visiting any other employee, but rather was told Mapp visited someone in another department.

Estelle Locklear, the wife of Kenneth Locklear, was called as a rebuttal witness by the General Counsel, and in her testimony stated her husband came to her work area approximately once a month. Estelle Locklear said Beaming Supervisor Hingson had seen her husband there as well as had Extrusion Shift Supervisor Dan Jones. Estelle Locklear testified her husband was wearing a union button the night he was given a warning.

Beaming Supervisor Hingson testified he had an occasion on April 25, 1980, to observe a man in his department talking to employee Estelle Locklear at a time when she was supposed to be working on her job. Hingson placed the time at approximately 11:30 p.m. Hingson approached the person whom he did not know and asked if he could help him in any way. The individual, whom he later learned was Kenneth Locklear, told him that he was talking to his wife. Hingson told Locklear his wife was still working and he would have to wait for her at the timeclock. Hingson continued to walk the shift with oncoming Supervisor Dan Jones. Approximately 5 minutes later, Hingson came by the area where Estelle Locklear and her husband were and Kenneth Locklear had not left. Hingson commenced to approach Kenneth Locklear, but just before he got to him Locklear left. Hingson stated he called Supervisor Lynn Duck to inquire of him if he had an employee named Kenneth Locklear in his department. Hingson told Duck he had asked Locklear to leave the beaming department and he would not. According to Hingson, Locklear was not wearing a union button on the night he observed him in his department. Hingson testified he had seen employee Elton Johnson in his department on occasion, but that Johnson had left when he asked him to. Extrusion Shift Supervisor Jones corroborated the testimony of Hingson.

Supervisor Lynn Duck stated he was contacted in the early morning hours of April 26, 1980, by Beaming Supervisor Hingson and was asked by Hingson if he had an employee, Kenneth Locklear, in his department. Hingson told Duck Locklear had been in his department but would not leave when asked. Duck contacted Extrusion Supervisor Peterson and issued a warning to Locklear for interfering with another employee and for not leaving a department when he was asked to by the department supervisor. Extrusion Supervisor Peterson corroborated Duck's testimony.

Counsel for the General Counsel established a *prima facie* case with respect to the disciplinary warning given to employee Locklear. Locklear had been active for the Union. The Respondent through Extrusion Supervisor Peterson on April 15, 1980, had unlawfully interrogated Locklear, and it was shortly thereafter that he was disciplined. Thus, the burden shifted to Respondent to demonstrate the same action would have taken place even in the absence of Locklear's protected conduct. I find Respondent met that burden.

First, Locklear's testimony on direct that other employees had visited plant departments without being disciplined simply did not stand up under cross-examination. Locklear only knew secondhand of other employees having been in other departments at Respondent. Although Supervisor Hingson acknowledged Elton Johnson had been in the beaming department, he had left when he was asked to. I do not credit Locklear's testimony that Johnson was still in the department when he left the beaming department on the night in question because it is not borne out by the timecards of Johnson and Locklear. The timecards indicate Johnson clocked in at his department at 11:51 p.m., whereas Kenneth Locklear clocked in at 11:54 p.m. Notwithstanding this evidence, Locklear would contend that Johnson was still in the beaming department at the time he [Locklear] left and that Johnson could not have departed the beaming department without Locklear's having seen him. Locklear did not deny having been in the department, neither did he deny remaining in the department after being told to leave. I conclude and find that Locklear was disciplined for having refused to leave a particular department of Respondent where he did not work after being requested to do so and for visiting the department without the approval of the department supervisor. I find the discipline would have been administered to Locklear even in the absence of any protected conduct by him. I therefore recommend that paragraph 11 of the complaint in Case 10-CA-16016 be dismissed in its entirety.

5. The suspension of employee James A. White

The General Counsel at paragraph 13 of the complaint in Case 10-CA-16016 alleges that Respondent unlawfully suspended its employee James A. White on or about April 22, 1980.

The Respondent admitted giving employee White a 3-day suspension commencing on April 22, 1980, but contended it did so for good cause.

White, a loom fixer at Respondent, became aware of the union campaign in March 1980. White joined a union committee, wore a union button, and handed out union leaflets on four or five occasions at Respondent's plant. The first time White handed out union leaflets, which was on March 30, 1980, he was seen doing so by Weaving Superintendent Gerald Lewis and Textile Superintendent B. J. Armistead. White was also present on April 9, 1980, when employees were told by the plant guard that they could not pass out leaflets on Respondent's property. White stated he first wore his union button on April 9, 1980.

On April 9 White testified that Respondent ran a toolbox check and found he had two shuttles that belonged to Respondent in his toolbox. White testified he was given a warning for having the shuttles in his toolbox. White stated that was the first warning he had been given in 11 years at Respondent. White testified there had been toolbox checks previous to the one on April 9,

and on those occasions he had excess parts in his toolbox without any disciplinary action being taken against him. According to White, the latest incident prior to the April 9 one was 2 or 3 years previous.[22]

White testified he received a warning on April 22, 1980. He described the events leading up to his warning as follows: "Well, I was sharpening my screwdriver on the belt sander and Gerald Lewis and J. C. Dixon came in and caught me using the belt sander without goggles." White stated that Weaving Superintendent Lewis told him to go to his office. Lewis got White's immediate supervisor and they gave White a 3-day suspension for using a belt sander without safety goggles. White said he had sharpened tools 6 or 8 months earlier without safety glasses in the presence of Process Control Engineer Dixon.

On cross-examination White acknowledged that he had stated in his pre-trial affidavit to the Board with respect to sharpening his screwdriver on a belt sander, "I was supposed to wear safety glasses, but I left them behind in my tool box." White also acknowledged he had stated in his pre-trial affidavit, "A person could be seriously injured doing this work without glasses." White claimed in his pre-trial affidavit that he never used safety glasses.

White's testimony that he had never received a warning prior to the one on April 9, 1980, for having two shuttles in his toolbox is somewhat suspect. Respondent Exhibit 32, which was a warning given to James A. White on February 12, 1977, stated it was for having committed the unsafe act of blowing off a loom without eye protection. The warning was signed by White. This factor taken in conjunction with the overwhelming evidence that Respondent took appropriate action with respect to employees who violated safety regulations causes me to conclude that White misstated the truth when he indicated he had sharpened screwdrivers before in the presence of supervisors without any action being taken against him. I simply do not believe White's testimony in that respect and, accordingly, discredit it.

White had union activity commencing in early April 1980. His union activity was known to Respondent. Shortly after White handbilled for the Union at Respondent, he received disciplinary warnings. One of the warnings, however, is not in issue in this proceeding. I conclude that the General Counsel established a *prima facie* case sufficient to support an inference that protected conduct was a motivating factor in the Respondent's decision to discipline White. However, I conclude and find Respondent met its burden under *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), of demonstrating that the same action would have taken place against White even in the absence of protected conduct.

White acknowledged he was sharpening a screwdriver without eye protection and was aware such conduct could result in injury. Respondent provided each of its employees a booklet entitled "Safe Practices Guide" (Resp. Exh. 12), and at page 22 thereof it states: "Always wear safety glasses, goggles or face shield, designed for the type work when operating any machines." Further, Employee Relations Manager Sego testified, and I credit his testimony in that respect, that Respondent in October 1977 had posted a notice to all employees concerning the use of safety glasses in the shop. (Resp. Exh. 14.) Loom fixer Jerry Harris testified in the 10 years he had worked for Respondent it had been a requirement to wear safety glasses when working in the shop area. Other employees testifying of the requirement of safety protection were Buck Browning, Monroe Stone, Allen Summerlin, and Gary Rooks. Respondent demonstrated it had enforced safety rules before and after White had received his disciplinary warning. Respondent demonstrated its consistent policy by the disciplinary warnings given to Orin Favors (Resp. Exh. 25), Allen Hollis (Resp. Exh. 26), J. A. Rolin (Resp. Exh. 27), Jimmy Alls (Resp. Exh. 28), William Miller (Resp. Exh. 29), Phillip Lynch (Resp. Exh. 30), Collis Roundtree (Resp. Exh. 31), Myrtle Bryant (Resp. Exh. 33), and Ulysses Gear (Resp. Exh. 34). I therefore conclude and find Respondent did not violate the Act when it suspended its employee James Albert White for 3 days commencing on April 22, 1980. I therefore recommend paragraph 13 of the complaint in Case 10-CA-16016 be dismissed in its entirety, inasmuch as it is not unlawful for an employer to establish and uniformly enforce work rules for safety.

6. The changed work assignment of employee Elijah Bailey III

The General Counsel alleges at paragraph 14 of the complaint in Case 10-CA-16016 that Respondent on or about April 9, 1980, changed the work assignment of its employee Elijah Bailey III by removing him, contrary to past practice, from the position of substitute lead operator because of his membership in and activities on behalf of the Union and because he engaged in concerted activities with other employees for the purposes of collective bargaining and other aid and protection.

Respondent admitted it demoted Bailey from a temporary lead operator position on or about April 9, 1980, but contended it did so in accordance with its established practice of placing the most senior operator in lead operator positions when lead operators were absent for an extended period of time.

Elijah Bailey became aware of the Union in April 1980. He passed out union leaflets in the plant parking lot, attempted to have employees sign up with the Union and attended meetings of the Union held in the homes of fellow employees. Bailey passed out among other union leaflets what was received in evidence as General Counsel's Exhibit 3, which was a list of employees of Respondent who favored the Union. Bailey's name was on the union leaflet. Bailey was unable to recall exactly when General Counsel's Exhibit 3 was distributed to fellow employees. Supervisor Duck, as set forth elsewhere in this Decision, admitted asking Bailey how he felt about the Union on April 8, 1980. In the same conversation, Supervisor Duck told Bailey that unions consisted of organized crime and could only survive by taking members' money through union dues. Duck also

[22] Counsel for the General Counsel stated at the hearing that she was not asking for a finding of any violation of the Act with respect to the April 9, 1980, toolbox warning given to White.

told Bailey, if a problem arose, an employee could no longer go to his supervisor with it, but would rather have to go to a union person.

Bailey testified Employment Manager Gene Shearl asked him on April 9, 1980, if he thought the Union would buy him a tackle box.

Bailey's regular job was that of an extrusion operator. However, when a lead operator was absent, Bailey testified he filled in as the lead operator. A lead operator's position paid 30 cents more per hour than did the operator's job. Bailey testified that on April 8, 1980, his shift supervisor, Virgil Mathis, asked him if he would fill in for leadperson Buck Westbury, who would be out due to a sickness approximately 6 weeks. Bailey reported for work on April 9, 1980, and performed the job of lead operator. This was the first time Bailey had worn his union button. At the end of the shift, Extrusion Supervisor Mathis told Bailey he wanted him to operate machines 5 and 6 the following day, April 10, 1980.

On April 10, 1980, Bailey testified he did not fill in as a substitute leadperson, but rather instead a fellow employee, John Walker, filled in. Bailey inquired of Extrusion Supervisor Mathis why the change to John Walker from him, and was told by Mathis it was because he had five or six cutoffs.[23] Bailey protested saying he did not have five or six cutoffs. Extrusion Supervisor Mathis told him to go to the office. Bailey told Mathis in the office that he felt he was being done wrong. Bailey was never shown his record with respect to whether he actually had five or six cutoffs. Bailey has never filled in as a leadperson since that time. Bailey stated that since that time his younger brother, Glen Bailey, and Joe Walker had filled in as substitute lead operators. Bailey testified none of those who had filled in as substitute leadpersons had done so other than himself prior to his wearing a union button on April 9, 1980.

Kenneth Locklear testified Bailey had been used as fill-in lead operator ever since he, Locklear, had been at Respondent up until the day Bailey wore his union button on either April 8 or 9, 1980, and that since that time someone else had filled in on each occasion when there was a need for a substitute lead operator. According to Locklear, John Walker had never worked as a fill-in lead operator prior to Elijah Bailey's wearing a union button.

Extrusion Supervisor Mathis testified that on April 8, 1980, he temporarily assigned employee Elijah Bailey to the position of lead operator. Mathis did so because an employee, Francis Palirino, had told him that the regular lead operator, Buck Westbury, would be out that day. According to Mathis, he was informed the following day, April 9, by employee Palirino that Westbury was going to be out for an appendectomy, and it was at that point he discussed with his immediate superior, Supervisor Lynn Duck, the fact that Westbury would be in the hospital or away from work for approximately 6 weeks. According to Mathis, he and Duck checked the employees seniority status and John Walker was the senior operator and as such it was decided to have him fill in as lead operator instead of Elijah Bailey because Walker was the senior operator. Mathis testified it was Respondent's normal procedure to have the senior operator fill in as lead operator if the lead operator were going to be off "for a lengthy period of time." Therefore, Mathis informed Bailey to return to lines 5 and 6, that John Walker would be filling in as lead operator. Mathis acknowledged that April 9 was the first time John Walker had ever filled in as a lead oeprator on the line that Elijah Bailey worked on.

Supervisor Duck testified Mathis contacted him with respect to a fill-in lead operator for employee Buck Westbury and that John Walker was chosen because Elijah Bailey did not have sufficient seniority to fill the position over Walker.

There are numerous factors which indicate that the General Counsel has established a very strong *prima facie* showing to support an inference that protected conduct was a motivating factor in the Respondent's decision to remove Elijah Bailey from the position of lead operator contrary to past practice. I credit the testimony of Bailey that he was told to assume the position of substitute lead operator on April 9 and further that he was told it would be for a period of 6 weeks. I also credit Bailey's testimony that when he protested the following day to Supervisor Mathis, Mathis told him he was being taken off the job because he had too may cutoffs, a contention which Bailey strenuously objected to. It was later advanced by Respondent that Bailey was taken from the substitute lead operator position because he was not the most senior employee to fill in. It is clear Respondent shifted its reason for removing Bailey from the position of substitute lead operator. Further, rather conclusive evidence of Respondent's unlawful motivation was demonstrated by the fact that this was the first occasion ever for Walker to fill in as lead operator on Bailey's line. Respondent's failure to allow Bailey to fill in as lead operator also coincided with the day Bailey commenced to wear his union button. I credit Bailey's testimony that this was the first time he had worn a union button. It is clear Respondent had animus toward the Union and unlawful conduct by Respondent had been directed specifically toward employee Bailey by Supervisor Duck in that Duck admitted asking Bailey questions which constituted coercive interrogation, and I have concluded elsewhere in this Decision Duck also threatened Bailey that he could no longer take his problems to his supervisor if a union came in. The Respondent has failed to demonstrate in any manner that the same action would have been taken against Bailey in the absence of Bailey's protected conduct. Respondent's attempted justifications with respect to Bailey were nothing more than a pretext. I have considered Bailey's situation in light of *Wright Line, a Division of Wright Line, Inc., supra*, even though it is essentially a pretext case because, at footnote 13, the Board stated: "Still an additional benefit which will result from our use of the *Mt. Healthy* test is that the perceived significance in distinguishing between pretext and dual motive cases will be obviated."[24]

[23] Bailey defined a cutoff as those incidents where material did not meet specifications requiring it to be run through the mill again.

[24] I have considered the situation under *Wright Line* while at the same time being mindful of Member Jenkins' comments in *The Bond Press, Inc.*, *Continued*

I therefore conclude and find Respondent violated Section 8(a)(3) and (1) of the Act when on April 9, 1980, it changed the work assignment of employee Elijah Bailey III by removing him contrary to past practice, from the position of substitute lead operator.

7. The alleged more onerous working conditions imposed on Clemenstine Hendsley and her subsequent leave of absence

The General Counsel alleges at paragraphs 15 and 16 of the complaint in Case 10-CA-16016 that Respondent on or about April 9, 1980, imposed more onerous working conditions on its employee Clemenstine Hendley by denying her, contrary to past practice, the assistance of a fellow employee in her job on reroll table 8, thus causing employee Clemenstine Hendley to take a leave of absence because of the more onerous working conditions imposed on her; and that Respondent imposed more onerous working conditions on Hendley and caused her to take a leave of absence because of her membership in and activities on behalf of the Union and because she engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection.

Employee Hendley testified she had worked for Respondent from February 1969 until June 11, 1980. For her first 8 years at Respondent she worked as a heat set inspector, and the last 2 years she had been a burling employee under the supervision of Howard Bennett. Hendley became aware of the union campaign in March 1980. She attended approximately 11 or 12 union meetings, starting about the middle of March 1980. She talked to 30 to 40 employees about joining the Union, signed the union committee sheet, and wore a union button. As is set forth elsewhere in this Decision, Respondent through Weaving Shift Supervisor Bennett inquired of Hendley how she felt about the Union. Hendley expressed to Bennett that she had had 8 years' working experience under a union in piecework and was interested in knowing how it would work out in mill-type work. Further, as set forth elsewhere in this Decision, Weaving Shift Supervisor Bennett told Hendley she could no longer go to her supervisor with her personal problems if the Union came in. Hendley testified she attended a union meeting at the King Frog Restaurant in Adel, Georgia, on April 8, 1980, and, as she was getting out of her car to go into the meeting, she saw and spoke with Employee Relations Manager James Sego. It was also on April 8, 1980, that Hendley signed a union card and obtained her union button.

Hendley testified that, following the union meeting that afternoon, she went to work and was met at the front by Weaving Shift Supervisor Bennett who told her he wanted to see all of the burling employees in his office. Hendley was wearing her union button at the time. Bennett told Hendley and the other burling employees, "I'm going to start rotating you girls back and forth to the reroll table." Bennett gave as a reason that work was slack and stated to Hendley that she had been going pretty regularly to reroll anyway. Hendley acknowledged that she had been doing reroll work regularly for a while because the other employees did not seem to like to go over there and she did not mind. Hendley told Bennett later that shift as he was walking back to her burling table with her that she hoped he would take no offense by it but she had decided she had to do what she had to do and that she was going to support the Union.

When Hendley reported to work the next afternoon, Weaving Shift Supervisor Bennett assigned her to work reroll table 8. Hendley informed Bennett that she was not feeling well, that she had a physical problem, that her hemorrhoids were bothering her. Hendley said she thought Bennett would take her off the reroll table and put her back on burling after she told him about her hemorrhoids, but, according to Hendley, "he didn't, so . . . they brought me a lot of small rolls." Hendley testified that the doffer who worked in her area helped her with the rolls getting them on the reroll table. Later that same shift, the Hyster lift driver brought three large rolls, 72 inches in width, for her to work on. According to Hendley, the first two weighed about 1,200 pounds and the third weighed approximately 2,500 pounds. Upon returning from dinner break, Hendley said the doffer (Calvin Mapps) who had always assisted her came to her table and told her that he had just gotten the word not to help her load her table anymore. Hendley attempted to manage without the assistance of a doffer. Hendley stated one of the rolls was lying approximately 6 feet behind her table and when she went to move the roll, she realized "I couldn't even budge it." Hendley testified that being as stubborn as she was, "I backed up to it and pushed it with my bottom." Hendley stated she finally got the roll to her table, but could not get it up on the table. Hendley waved down a Hyster lift driver and he assisted her in getting the roll on the hydraulic lift to put it up to the table.

The following day Hendley consulted a physician who told her she was ruptured and would need surgery. The following morning she had surgery and was away from work for 8 weeks. Hendley returned to work on June 9, 1980.

Calvin Mapps testified that he was a reroll doffer on the same shift with Clemenstine Hendley and worked for Weaving Shift Supervisor Bennett. The duties of a reroll doffer, according to Mapps, was to take a roll off the table and put on a new spool, that the next roll would be rolled onto it. Reroll doffer Mapps stated that, when he got a request to help one of the women employees, it would take less than a minute to assist them. Mapps recalled having a conversation with Weaving Shift Supervisor Bennett on the last night Hendley worked prior to her checking into the hospital for an operation the following day. Bennett talked to Mapps about Mapps' assisting the reroll operators. Mapps was told to do his job; "He told me that the job I was helping her do that wasn't my job. My job was to take the rolls off the machine." Bennett told Mapps he was to help the reroll operators only "if they really needed it." Mapps testified it

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254 NLRB 1227, and *Five Star Air Freight Corporation*, 255 NLRB 275 (1981), in which he indicates that in pretext cases it is not necessary to rely on the principles of *Wright Line*.

would take approximately 5 pounds of pressure to roll one of the rolls upon the reroll table. Mapps testified that, prior to Weaving Shift Supervisor Bennett speaking with him about not assisting the women reroll operators, it was his practice to assist them any time they asked. At the time Mapps was given the instructions by Bennett, he was assisting employee Hendley. This was the first time according to Mapps, that Bennett had ever said anything to him about assisting the reroll operators, although Bennett had seen Mapps assist Hendley on occasions previous to this. Mapps testified that, if the bar in a roll were not straight, a woman employee would need a doffer to help her get it straight and put it behind the machine because "a woman couldn't do it." Mapps testified that following his conversation with Weaving Shift Supervisor Bennett, Hendley asked him to help her with a roll and he told her "that Howard [Bennett] had told him that wasn't my job. My job was to take them off." Mapps said he refused to help Hendley because "well, I was afraid, you know, of losing my job."

Weaving Shift Supervisor Bennett testified he was having some problems with the doffer on the shift Hendley worked on in that he was avoiding his own job helping out the inspectors and others with their jobs. Bennett identified the employee as Calvin Mapps. Bennett testified that Hendley sought assistance on one occasion around 10 p.m. on the night in question, April 9, and that he assisted her at that time. He testified she did not mention to him that she was having any problems with her hemorrhoids. Bennett stated he learned on April 10, 1980, that Hendley was in the hospital for surgery and that she did not return to work until June 9, 1980.

Employee Hendley impressed me as a witness who was telling the truth and as such I credit her testimony. I accept as accurate, however, Respondent's records with respect to the weight of the rolls that Hendley was required to move on April 9. The fact the rolls may have seemed to weigh 2,500 pounds does not detract from the overall credibility of Hendley's testimony.

I find that the General Counsel established a clear *prima facie* showing sufficient to support an inference that protected conduct was a motivating factor in Respondent's decision to place more onerous working conditions on employee Hendley. There is no question but that Respondent had unlawfully interrogated Hendley through its supervisor and agent, Weaving Shfit Supervisor Bennett. Further Bennett had threatened employees, especially Hendley, that she could no longer take her problems directly to management if the Union came in. Further, Hendley wore her union button for the first time on the date Respondent changed its past practice of allowing a reroll doffer to assist Hendley in her job on the reroll table. I conclude it was no mere coincidence that Weaving Shift Supervisor Bennett discussed with reroll doffer Mapps his job duties on the date Hendley wore her union button to work. Mapps clearly indicated it had been his past practice to assist Hendley and that this was the first occasion Bennett had ever said anything to him about the assistance. The more onerous working conditions were not the fact that Hendley was assigned to do reroll work. She clearly had performed that task in the past. The more onerous working conditions were simply that Respondent learned employee Hendley had a medical problem and at that point removed from her the assistance she previously had been receiving with, in my opinion, an eye toward physically driving employee Hendley from the employment of Respondent because of her union and concerted activities. As indicated elsewhere in this Decision, other of the chief adherents of the Union may have provided Respondent with valid reason to discipline or discharge them. However, in the case of Hendley, she had done nothing other than attempt to exercise her rights which were protected by the Act. I conclude and find that Respondent did not demonstrate that the same action would have taken place even in the absence of the protected conduct of Hendley. The defense of Respondent with respect to Hendley was in reality untrue and as such constituted nothing more than a pretext.[25] I therefore conclude and find Respondent violated Section 8(a)(3) and (1) of the Act when on April 9, 1980, it imposed more onerous working conditions on its employee Clemenstine Hendley by denying her, contrary to past practice, the assistance of a fellow employee in her job on the reroll table.

Hendley testified she returned to work on June 9, 1980, and that her doctor sent along a statement that she was to do light work for a few days. Hendley testified she arrived at work and proceeded by checking with Respondent's nurse in order to obtain clearance to return to work. When Hendley told Plant Nurse Roberts that she had the restrictions for a few days, Nurse Roberts told her that Respondent's physician, Dr. Rudolph, had placed a statement in her file imposing a weight-lift limitation of 25 pounds. Plant Nurse Roberts informed Hendley that this was a result of Hendley's having a kidney removed 2 years earlier. Plant Nurse Roberts gave Hendley a written statement regarding the restrictions and Hendley proceeded to give it to Weaving Shift Supervisor Bennett. Bennett told Hendley to work the burling table that day. Bennett asked Hendley if she would be able to pull bad "slubs" out, and Hendley informed him that she would. The following day Hendley was called into the office by Weaving Shift Supervisor Bennett, who told her he needed to talk with her concerning the 25-pound weight limitation. Hendley complained she did not know anything about it. Bennett told Hendley he would have to call the doctor who had done the surgery on her (the kidney surgery). Hendley informed Bennett he would have to call the University of Florida inasmuch as that was where she had her kidney surgery done 2 years earlier. Bennett then took Hendley to Employment Manager Shearl's office.

Upon arriving at Shearl's office, he (Shearl) told Hendley that they were concerned about the 25-pound weight limitation placed on her. Hendley told Shearl she knew nothing about it, and Shearl called Plant Nurse Roberts. Roberts informed Shearl that Dr. Rudolph had made the decision that Hendley was not to do any lifting in excess of 25 pounds. At this point, Shearl asked Hendley to allow him to make a tape of what happened on

[25] I have analyzed Hendley's situation under the principles of *Wright Line*, *supra*, based on the Board's comment in fn. 13 of that decision

the last night she worked in April. Hendley told Shearl she did not trust him and would rather have it written out. Shearl wrote a statement and Hendley signed it. Shearl then informed Hendley he was going to have to lay her off until a job came open which would not put her in any jeopardy. Hendley complained saying she did not understand this, that she had worked for 2 years since the surgery on her kidney with no problem. Shearl told Hendley to call him every 1 or 2 weeks to find out if any job was open that she could perform. Hendley testified that her burling job would not require lifting, and that she enjoyed it because it did not hurt her. Shearl informed Hendley that it required more than a 25-pound pull to get the material moved about on the burling table.

Hendley faithfully called Respondent for several weeks attempting to find out if they had any job she could work at. She was told each time they did not. Hendley testified she felt Respondent enjoyed her having to beg for a job and that she got tired of it and quit calling.

Plant Nurse Linda Roberts testified that Hendley had a weight limitation and a no-climbing restriction placed on her in May 1978. Plant Nurse Roberts stated that when Hendley returned from her operation on June 9, 1980, she had a discussion with Hendley's supervisor about the weight restriction. The weight restriction, according to Plant Nurse Roberts, had been placed on Hendley because of her having had an aneurysm and earlier surgery. Roberts testified she assumed the weight limitation was placed on by Respondent's doctor "apparently from what he knew of her diagnosis, what was done at Chands Hospital." Plant Nurse Roberts did not know if Dr. Rudolph had discussed the weight limitation with Hendley in 1978.

Employment Manager Shearl testified he placed employee Hendley on a leave of absence on June 9, 1980, because upon her return to work it was discovered she was under a restriction not to lift over 25 pounds. Shearl stated it was Respondent's policy to provide employees with work commensurate with their medical restrictions if any work were available which they could perform, but if not, Respondent placed the employee on a leave of absence. Shearl testified that Employee Relations Manager Sego had informed him of the weight restriction on Hendley. Shearl discussed the restriction with Hendley on June 11, 1980. Shearl testified, "I told her that she was operating under a restriction not to lift over 25 pounds and she would not be able to continue in the job she had been on under that restriction." Employment Manager Shearl testified that employee Hendley protested, wanting to know why all of a sudden was it that she could not handle the job. Shearl told Hendley that "we had just discovered the restriction. Also, that it was the first time to my knowledge anyone had been in the medical file since 1978." Shearl stated the burling job had over the years become physically heavier than it had previously been. Shearl testified Hendley wanted to know why she could not remain on burling, and he explained to her that it would be preferential treatment toward her and that Respondent could not do that.

I find the General Counsel established a *prima facie* case under the *Wright Line, supra*, principles. The Respondent failed to meet its burden of showing that the action taken against Hendley would have taken place even in the absence of protected conduct. It is quite clear that Respondent permitted employee Hendley to function for 2 years as an employee without attempting to enforce the weight restriction placed on her by Dr. Rudolph. The Respondent's contention, "through accident or oversight, Respondent was not aware of the lifting restriction that Hendley's physician placed on her activities in 1978 or that Hendley's duties as a 'burler' violated the 25-pound weight restrict," I find to be untenable. As demonstrated by the various exhibits presented at the hearing in this case, Respondent kept meticulous records and knew its operation from top to bottom. For Respondent to come at this point and plead that it was an accident or oversight that it did not know the restriction placed on employee Hendley, or that it did not know that a burler job would require more then 25-pound weight exertion is simply unbelievable and I reject it. I conclude that upon the return of Hendley to employment in the early part of June, Respondent was looking for any reason it could find to rid itself of Hendley. The light duty placed on Hendley as a result of her hemorrhoidectomy was for 2 weeks only and she would then have been able to assume the duties she had performed for 2 years under her previous weight restriction. Respondent did not in any manner rebut the contention of the General Counsel that if reinstated Hendley could perform her burling job or even a reroll job if she were provided the assistance of a doffer to help her move rolls as she had been allowed for the past 2 years.

I therefore conclude and find that Respondent violated Section 8(a)(3) and (1) of the Act when it caused Hendley to take a leave of absence because of the imposition of more onerous working conditions on her as alleged in paragraph 16 of the complaint in Case 10-CA-16016.

8. The discharge of employee Abel C. Braswell

The General Counsel at paragraph 17 of the complaint in Case 10-CA-16016 alleges that Respondent on or about April 17, 1980, discharged and thereafter failed and refused to reinstate its employee Abel C. Braswell because of his membership in and activities on behalf of the Union and because he engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection.

The Respondent admitted it discharged Braswell on April 17, 1980, but contended it did so for good cause.

Braswell commenced work at Respondent apparently in 1972 and worked until his discharge in April 1980. Braswell became aware of the Union approximately 3 weeks before he was fired. Braswell testified he wore a union button commencing about 10 to 12 days before he was fired and wore it every day until he was fired. Braswell was employed as a warp hanger, and stated that on the day of his discharge Warping Department Supervisor Betty Tucker told him that Process Control Engineer Dixon had observed him using the wrong wrench on a warp he was removing. Tucker told Braswell that he

should have been using a ratchet wrench when in fact he was using an open-end wrench.[26] Braswell told Tucker he could not use the ratchet wrench because the bolt was too close to the beam head. Braswell testified that he was then taken to the office where there were a couple of other individuals present; namely, Weaving Supervisor Robert Tucker and Weaving Superintendent Gerald Lewis. According to Braswell, Weaving Superintendent Lewis told him that he hated to do it, but he was going to have to fire him for using the wrong wrench and not obeying orders.

Braswell testified that prior to his discharge he had received other warnings. Braswell testified that about 3 to 5 months prior to his discharge he had received a warning for not calling and previous to that, by approximately 2 years, he had received a warning for not reporting for work. Braswell testified he knew of no other employees who had been disciplined or fired for using the wrong wrench. Braswell denied that he was actually using the wrong wrench inasmuch as he claimed the ratchet wrench would not fit the bolt or nut on the particular loom he was working on at the time.

On cross-examination Braswell acknowledged he had received a warning in 1979 for too many garnishments on his paycheck. Braswell also acknowledged receiving a warning in February 1980 for failure to wear protective gloves that resulted in a finger injury. Braswell recalled attending a safety meeting with Warping Department Supervisor Tucker and other warp hangers wherein Tucker discussed the dangers of using the open-ended wrench because it resulted in too many hand injuries, and that it was he (Braswell) who suggested that a box-type ratchet wrench would prevent hand injuries. As a result of that meeting, Respondent purchased ratchet type wrenches and made them available to the warp hangers. Braswell recalled two hand injuries he had received while working at Respondent. In addition to the two hand injuries, Braswell testified he would get pieces of steel in his hand "and like that." Braswell acknowledged on cross-examination that on April 16, 1980, the day before he was fired, Warping Department Supervisor Betty Tucker had observed him removing some beam gears with the old open-ended wrench and she told him that the warp hangers had asked for the new wrenches and that Respondent had gotten them for the warp hangers and he should use them. Braswell acknowledged that Tucker at the time proceeded to his toolbox, obtained the correct wrench for him, brought it to him, told him to use it, and that he did in fact use it. Braswell also acknowledged that the very next day, about noontime, Tucker observed him using the old wrench again, and she reminded him that she had just talked to him about it the day before. Tucker asked Braswell where his ratchet wrench was, and again went to his toolbox, obtained it and brought it to Braswell. Braswell acknowledged that shortly after Tucker did this for him, he was taken to the office and terminated for his failure to use the safety wrench.

[26] Apparently a ratchet wrench is a solid enclosed wrench that fits over a bolt head or nut as opposed to a wrench having, as the title indicates, an open end.

Braswell stated the ratchet wrench would not fit on the particular loom he was working on, thus necessitating the open-ended wrench.

Warping Department Supervisor Tucker testified that she gave Braswell a written warning on February 22, 1980, for his failure to wear protective gloves which failure resulted in an injury to the little finger of Braswell. Tucker further testified that on April 8, 1980, employee Braswell received a 3-day suspension for mixing different colors of yarn. Tucker stated that, once yarn was mixed, it was not reclaimable, whereas if it were not mixed, it was reclaimable. Tucker testified that she conducted a safety meeting in February 1980 with the warp crew including employee Braswell and that the warp crew recommended that ratchet wrenches be purchased by Respondent to remove beam gears to avoid injury to the hands of the warp crew.

Warping Department Supervisor Tucker testified she observed Braswell on April 16, 1980, removing some beam gears without using the ratchet wrench and she spoke with him about it, telling him Respondent was good enough to get the safer wrenches for use by the warp crew, and she expected them to use the safer wrenches. Tucker stated Braswell had the correct wrench in his toolbox. She thereafter saw him use it.

On the following day, April 17, she again observed Braswell removing beam gears with the wrong wrench. Tucker testified she asked Braswell why he was not using the new wrench, and he responded he had not taken time to get it. Tucker asked Braswell where the wrench was, and he told her it was in his toolbox. Tucker went to Braswell's toolbox, got the wrench, brought it back to Braswell, and he placed the gear on while she observed him do so with the ratchet wrench. Tucker testified that she told Braswell she would talk with him later about it.

Warping Department Supervisor Tucker consulted with Weaving Superintendent Lewis and recommended to him that Braswell be terminated. Lewis told Tucker to send Braswell home, and to instruct him to return the next day. The following day Braswell was terminated.

Tucker recalled Braswell having at least six hand injuries during the time he had worked for her. Weaving Superintendent Lewis corroborated the testimony of Tucker with respect to Lewis' part in the termination of Braswell.

Employment Manager Shearl testified he conducts an exit interview with each employee leaving the employment of Respondent. Shearl testified if the employee was separated voluntarily, Respondent inquired of the reason why the employee was leaving and asked for suggestions on how to improve Respondent. If the employee was being discharged, an attempt was made to ascertain if the employee understood why they were being discharged and to review the progressive disciplinary system with the employee. Shearl conducted such an exit interview with employee Braswell and asked him in the interview if he knew why he was being discharged. According to Shearl, Braswell stated he had been discharged because he had not used the correct wrench which Supervisor Tucker had bought for him. Shearl asked Braswell if that

were true, and Braswell admitted he had not used the wrench in removing the beam gear, that the wrench was in his toolbox, that he simply had not gone to get it. Shearl testified he had never seen Braswell wear a union button.

Employee Pat Warren testified that on April 13, 1980, he was in the men's restroom at Respondent's plant when a fellow committee member handed him a union card and stated to him at the time that the card was Abel Braswell's. Warren testified that Weaving Supervisor Robert Tucker was standing about 2 feet from him at the time.

Weaving Supervisor Robert Tucker testified that on April 13, 1980, employee Pat Warren's supervisor asked him to check and see if employee Warren was in the restroom. Employee Warren, according to Tucker, had left his job and his supervisor was looking for him, and since his supervisor was a woman, she had asked Tucker to check the men's restroom to see if Warren was in there. Tucker testified he opened the door to the restroom, observed Warren washing his hands, turned around, left, and told Warren's supervisor that Warren was in the restroom. Tucker testified he did not enter the restroom nor did he see anything being handed from one employee to another.

As far as establishing knowledge on the part of Respondent of any union activities by Braswell, I conclude and find that the meeting in the restroom on April 13 took place as testified to by Tucker and specifically discredit Warren's testimony to the contrary. As a result thereof, I conclude that knowledge of Braswell's union activities, if any, could not be attributed to the Respondent based on the April 14, 1980, bathroom incident.

The fact that employee Hancock testified she worked near Braswell every day and never saw him wear a union button, or that Employment Manager Shearl testified he never saw Braswell wear a union button, does not establish conclusively that Braswell did not wear a union button. I credit Shearl and Hancock's testimony that they never observed Braswell wearing a union button; however, I am persuaded that this does not constitute conclusive proof that Braswell never wore one. I have a great deal of difficulty in crediting any testimony of Braswell that is contradicted or uncorroborated. My impression of Braswell's testimony was not so much that of any deliberate misstatement, but more in the nature of a witness who was highly confused as to what had taken place particularly with respect to the events surrounding certain warnings Braswell received and the events surrounding the day of his termination. Notwithstanding my conclusion that Braswell's testimony is unreliable primarily based on the apparent confusion of Braswell with respect to events surrounding him, I do conclude that his testimony was clear and convincing with respect to his having worn a union button. I therefore conclude that Respondent had knowledge of Braswell's union sympathies prior to his discharge on April 17, 1980. Therefore, I conclude that the General Counsel established a *prima facie* case sufficient to support an inference that protected conduct was a motivating factor in Respondent's decision to terminate Braswell. *Wright Line, supra.* I am persuaded, however, that Respondent met its burden of demonstrating that the same action would have taken place even in the absence of the protected conduct of Braswell.

I credit the testimony of Warping Department Supervisor Tucker that on the day Braswell was terminated she obtained the correct wrench for him and observed him perform the work task with that wrench. I further credit the testimony of Tucker that she had warned Braswell the day before about using the wrong wrench thus creating a potential of injury to the employee. I credit the testimony of Employment Relations Manager Shearl that Braswell admitted to him the day following his having been sent home that he had used the wrong wrench in performing the job and that the proper wrench was in his toolbox. Braswell admitted he had previous hand injuries and it was he who had suggested the new tool—the ratchet wrench—for use in an attempt to prevent hand injuries.

There is no doubt but that Braswell was terminated for failing to use the safer wrench at a time when he had the safer wrench in his toolbox. Further, Respondent was following its past practice of disciplining employees who engaged in unsafe acts. Respondent demonstrated that employees had been disciplined before the event involving Braswell, at or about the time of the event involving Braswell and after Braswell had been disciplined for failing to comply with safe work rule standards. For example, Respondent had disciplined Borin Favors, Allen Hollis, J. A. Rolin, Jimmy Alls, William Miller, Phillip Lunch, Collis Roundtree, James A. White, Myrtle Bryant, and Ulysses Gear for failing to follow safety rules or for committing unsafe acts. Therefore, I conclude and find that Respondent met its burden of showing the same action would have been taken against Braswell even in the absence of any protected conduct on his part, and as such I therefore recommend that portion of complaint paragraph 17 in Case 10-CA-16016 as it pertains to the discharge of Braswell be dismissed in its entirety.

9. The discharge of employee Peggy Ruth Gardner

The General Counsel at paragraph 17 of the complaint in Case 10-CA-16016 alleges that Respondent on or about April 26, 1980, discharged and thereafter failed and refused to reinstate its employee Peggy Ruth Gardner because of her membership in and activities on behalf of the Union and because she engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection.

The Respondent admitted it discharged Gardner on April 26, 1980, but contended it did so for good cause.

Employee Peggy Ruth Gardner testified she worked for Respondent from October 1971 until April 1980. At the time of her discharge Gardner was a weaver under the supervision of Weaving Supervisor Tucker.[27] Gardner testified she became aware of the union campaign on March 30, 1980. She participated in handing out leaflets in the parking lot of Respondent. Gardner wore a union

[27] Throughout this Decision, Weaving Supervisor Tucker has been referred to as either Jack or Robert inasmuch as his full name is Jack Robert Tucker.

button, signed a union committee card, and her name was on a leaflet containing several employees' names as supporting the Union, which leaflet was distributed as a handbill at the plant. Gardner along with fellow employees Hughes circulated the petition protesting the discharge of employee Warren as set forth elsewhere in this Decision and the violations by Respondent surrounding that petition.

Gardner testified that in mid-April 1980 Supervisor Johnni Skinner came to where she was and told her that her shirt would look a lot better without the patch she had on it. Gardner told Skinner that it would not, to which Skinner responded, "Well, all it's going to do is get you fired and it's a bad time to be hunting a job." The patch to which Skinner was referring, according to Gardner, was one sewn on her shirt which said "Union Organizing Committee."[28]

Gardner testified that the last day of her employment with Respondent was April 26, 1980. Gardner reported for work that day and gave Weaving Supervisor Tucker her doctor's excuse. He told Gardner she would have to help on flat weave that day because the lino machine was shut down. At approximately 9 a.m. when she and a fellow employee started to take a break, Weaving Supervisor Tucker called her into his office. Gardner testified Tucker told her he and Weaving Superintendent Lewis had decided to send her home. Gardner inquired why they were doing it, to which Tucker responded, "Betty, do you really want me to tell you?" Gardner testified she told him no, turned, and walked off. Tucker instructed Gardner to be present in Employee Relations Manager Sego's office on Monday morning at 10 a.m.

Gardner reported to Sego's office as told and was sent from there to Weaving Superintendent Lewis' office. Present in the office were Lewis and Weaving Supervisor Tucker. Lewis told Gardner that they had decided to fire her because she had been absent too much. Gardner testified she had missed 8 days at that point in the year. Gardner protested that she had not missed 12 days at that time, to which Lewis responded that at the rate she was going, she would miss 40 days. Gardner told Lewis that her child had been sick for a long time and they were running tests on him for leukemia. Gardner told Lewis that she had to take her child back to the doctor every 28 days for shots, and that, at any time he got sick, she was forced to take him to the doctor. Gardner testified Lewis responded, "If I can see that you[r] child was dying, I could see letting you off from work." Gardner told Lewis, "What do you think leukemia does to people?" Lewis then responded to Gardner that if her child was that sick, she did not need to work. Gardner told Lewis that she had always heard that Respondent allowed 12 days of absence per year. Lewis responded to Gardner that employees were only allowed 1 day per month. Gardner left Lewis' office at that time.

The following Tuesday, Gardner returned to Respondent's plant to meet with Plant Manager Cochran. According to Gardner, Cochran told her that he had gone over her records and she had missed 20 days in 1975 and he thought Respondent had been mighty good to her. Gardner testified she received no warning for her absenteeism.

Gardner testified she knew of other employees who had been absent from work for more than 8 days. Gardner identified employees Rose Simmons, Grace Outlaw, and Debbie Mosher as having missed more days than she and still working. Gardner testified Simmons had missed 19 days. She did not know how many Outlaw had missed, but Mosher had missed 14 days. Gardner testified that only one of them, Rose Simmons, had received a warning for her absenteeism. Gardner testified she had been told in the past that the absentee program was 12 days per year.

Gardner acknowledged on cross-examination that she had asked Weaving Superintendent Lewis for some time off in January 1980 because of the illness of her child. Immediately following that conversation with Lewis, she had a meeting with Weaving Supervisor Tucker in which Tucker spoke to her about her absenteeism.

Rose Simmons testified that she was an employee of Respondent and became aware of the union campaign in 1980, but that she never wore a union badge, never handbilled or talked to employees about the Union. She testified she had inquired of Weaving Superintendent Lewis in August 1980 about getting her union card back and he gave her the address of where to write to obtain it back. Simmons testified she received a number of warnings for absenteeism, the first of which was on April 14, 1980. She testified she had missed approximately 10 days at the time of her first warning. Simmons received a second warning around May 1, 1980, after she had missed 2 additional days. Simmons additionally testified that near the last of August or first of September 1980, after having missed an additional 3 days, she received yet another warning for absenteeism. Simmons testified Respondent had a policy of allowing 12 days of absence and after that an employee could be terminated. Simmons stated she was told of Respondent's policy by Weaving Superintendent Lewis when he gave her the second warning. At the time she was given the second warning, she was told she could take a 2-week leave of absence in order to get her personal affairs, i.e., a sick baby, taken care of. Simmons testified that Lewis told her he could see her being off if the baby was about to die, but no other way. After her return from her 2-week leave of absence, she was then given the third warning for absenteeism. At the time of her third warning she had missed approximately 14 days. Simmons testified that employee Gardner was out "a great deal" with her baby. The third warning Simmons received resulted in a 3-day suspension.

Weaving Supervisor Jack Robert Tucker testified employee Gardner worked for him as a weaver. Tucker testified he gave Gardner a warning in November 1979 for excessive absenteeism. On March 26, 1980, Tucker gave Gardner a 3-day suspension for excessive absenteeism. Tucker testified Gardner was actually terminated on April 28, 1980, for chronic absenteeism. Tucker testified

[28] The General Counsel at the hearing contended she was placing this evidence with respect to Skinner into the record merely as a matter of background and was not seeking to have a finding made thereon of any unlawful conduct. Accordingly, I have made no finding with respect thereto.

he sent Gardner home in order to afford Weaving Superintendent Lewis and himself time to discuss her absenteeism. The following day, April 29, 1980, Tucker and Lewis talked with Gardner and told her she was being discharged for absenteeism. Tucker testified Gardner told Lewis and himself at the time that they were doing it because of her sick child. According to Tucker, Lewis told Gardner that they were not firing her because her child was sick, but rather because she had a bad absentee record. According to Tucker, Lewis asked Gardner if she wished to carry the matter any further, and she responded she did not. As Gardner was leaving the office, she told Lewis, "I've got one more thing to say—that I hope your kid gets sick and you have to be out and they fire your ass."

Tucker testified he knew Gardner was for the Union and had seen her wear a union button and stated she was in fact wearing a union button at the time she was terminated. Tucker testified Gardner was not given a leave of absence in 1980, but she was offered one. Tucker testified that in the very early days of January, Gardner had missed 3 or 4 days, but she was not given a warning. Tucker stated he did, however, offer to her a leave of absence. Weaving Superintendent Lewis substantiated the testimony of Weaving Supervisor Tucker.

Counsel for the General Counsel established a *prima facie* showing sufficient to support an inference that protected conduct was a motivating factor in Respondent's decision to discharge employee Gardner. Gardner had been one of the two employees who had attempted to circulate and obtain signatures on a petition protesting the discharge of employee Warren. Further, Respondent through its supervisor and agent, Process Control Engineer Dixon, unlawfully interrogated Gardner along with fellow employee Hughes with respect to the petition and at the same time promulgated, maintained, and enforced a rule prohibiting union solicitation and distribution on Respondent's property and confiscated the petition Gardner and fellow employee Hughes circulated. Further demonstration of Respondent's union animus toward Gardner is demonstrated by the conversation of Supervisor Skinner to Gardner. I credit Gardner's testimony with respect thereto. It is therefore clear that Respondent knew of Gardner's concerted and union activities. The evidence indicated Respondent would have welcomed an opportunity to rid itself of Gardner lawfully, but the occasion did not present itself.

Respondent's attendance policy stated, among other things, "An employee may be absent so excessively that he cannot meet the Company's requirements as an employee even though he provides an acceptable reason for each absence." Further, with respect to absenteeism, its attendance policy stated, "In considering excessive absenteeism, extended illness (with proper granted leaves of absence), death in the employee's immediate family or jury duty will not be counted toward excessive absenteeism." The Respondent's absentee policy further stated, "Excluding the above, absences in excess of one day per month or twelve (12) days per year will be considered excessive. The records of employees with excessive absenteeism will be reviewed by the supervisor, department superintendent and the employee relations manager to determine whether the employee should be terminated." Respondent was able to demonstrate by Respondent's Exhibits 19 through 24 that it had discharged employees before the advent of the Union and after Gardner's discharge for excessive absenteeism. It failed, however, in my opinion, to demonstrate that it adhered to a strict policy with respect to when it would terminate an employee for absenteeism. Some employees accumulated greater absences before discipline than others. A clear example of this was demonstrated by employee Simmons who accumulated absences in a calendar year which resulted in her receiving three warnings in the same year but was only suspended for 3 days. I conclude that Respondent had a motive other than enforcing its absenteeism policy when it discharged Gardner. I therefore am persuaded that Respondent did not meet its burden of demonstrating that the same action would have been taken against Gardner in the absence of her protected conduct and as such I find Respondent violated Section 8(a)(3) and (1) of the Act when it terminated its employee Peggy Ruth Gardner on or about April 26, 1980, as alleged in paragraph 17 of the complaint in Case 10-CA-16016.

10. The alleged instruction by Respondent to an employee to give false testimony in a Board proceeding

The General Counsel at the hearing in the case herein on November 19, 1980, moved to amend the complaint in Case 10-CA-16016 by adding a paragrph 17(a), which amendment the General Counsel dictated into the record as follows:

> Respondent through its Supervisors and Agents, Howard Bennett and Gene Williams, on or about November 14, 1980, instructed its employee to give false testimony in a Board proceeding and threatened that employee with reprisal if she testified in a Board proceeding and thereby interfered with the process of the Board in violation of the rule in *Johnnie Poultry*. Additionally, that by doing so Respondent has violated Section 8(a)(3) and (1) of the Act, as amended.

Respondent filed a written answer with the Regional Director of Region 10 of the Board denying the allegation of the amendment as set forth above. Employee Joan Foxworth testified in the instant case on November 18, 1980, and stated that 4 days before her testimony she had a conversation with Third-Shift Superintendent Gene Williams and Weaving Shift Supervisor Howard Bennett in Williams' office. She testified:

> Well, I went—I asked Gene [Williams] if I could talk to him about this because I didn't want to come and so I went in there and I was talking to him and he told me that I didn't have to come but that the judge could send the sheriff after me and he told me that he wasn't going to tell me what to do, but if he was me he would come on down here and make the rest of them look like a bunch of sons-of-a-bitches. . . . And, so he told me—he told me that

> this conversation was between me and him and Howard and that if I said anything about it that Howard would back him up that it wouldn't never be—that Howard would help him deny it that they would say that it did not take place. . . . He told me it would be to my best interest to keep my mouth shut.

Weaving Shift Supervisor Bennett testified that employee Foxworth approached him in September 1980 and asked him if he could give her assistance in obtaining her union card back from the Union. Bennett informed Foxworth that he would check into the matter and get back to her. Bennett testified he checked with Third-Shift Superintendent Williams and he and Williams consulted with Employee Relations Manager Sego and then arranged to meet with Foxworth. Bennett testified he and Williams met with Foxworth along with Weaving Superintendent Lewis. Bennett testified Lewis provided Foxworth the address of the National Labor Relations Board and the address of the union involved and that was the extent of the information or instruction provided or given to Foxworth.

Bennett testified that on November 13, 1980, Foxworth again appoached him this time about the upcoming Board hearing. Foxworth approached Bennett on the weaving floor during the shift and told him she had received a summons and asked if there were anything—any advice he could give her so that she would not have to appear. Bennett informed Foxworth that he would check into the matter and get back with her. Bennett then checked with Third-Shift Superintendent Williams and it was again decided they did not know what to tell Foxworth so they consulted with Employee Relations Manager Sego. The next night Bennett and Williams met with Foxworth. Bennett testified as follows:

> Jones said that she was tired of those son-of-a-bitches bothering her and she wanted to know what kind of advice we could give her about not going. She didn't want to attend. She said that she told us the way she received the summons—she said that a guy pulled up in the yard, kind of stood around out there in the car and walked around and finally had the nerve to come up and knock on the door and she answered the door and he told her to wait a minute and she stood there and watched him go back out to the car. She said as she watched him go back out to the car she noticed another guy out there and she said it was Charles Carver and she called him a low lying son-of-a-bitch and said then that guy comes walking back and up to the door and hands her a paper which was the subpoena.

Bennett testified that Foxworth asked Williams what advice he could give her. According to Bennett, Williams told her "the way we understand the law that she would not have to appear. That they would probably get a federal judge and then she would have to go." At this point Foxworth said she was tired of those "sons-of-a-bitches" bothering her, that they had been pestering her on the job, and that her mother was scared for her to be out for fear that someone would do her bodily harm. Bennett testified Williams then told her if she were really sincere, she ought to go express herself to them as she had done to him and Bennett over the last few days. Bennett testified that neither he nor Williams ever told Foxworth to go down there and make the rest of them "look like a bunch of son-of-a-bitches." Bennett further testified that neither he nor Williams at any time told Foxworth that it would be in her best interest to keep her "mouth shut." Finally, Bennett testified that neither he nor Williams told Foxworth that the conversation between them was just that and if anything was said about it, they would deny it ever took place.

Third-Shift Superintendent Williams corroborated the testimony of Bennett in all essential aspects. Williams testified that Foxworth stated several times during their meeting that she was tired of "those sons-of-a-bitches." Williams testified the final thing he said to Foxworth was, "I said, Joan, you are sincere—as you say you are about those sons-of-a-bitches bothering you, why don't you go down and express it to them as you have done it to us for the past several days." Williams was emphatic that he did not tell Foxworth that it would be in her best interest to keep her mouth shut.

Williams testified he and Bennett repeated to Foxworth that it was entirely up to her, that if she wanted to go it would have to be on her own, that was the only thing they could tell her. Williams further testified that when he checked with Employee Relations Manager Sego, Sego informed him to tell Foxworth:

> The way we understood the law was that she would not have to attend the meeting on the NLRB subpoena. It was strictly up to her. That we could not advise her what to do. That the only thing we could say was that if she did not attend, that they could probably obtain another subpoena from a federal judge and she would have to appear on that. And that's all we could, you know, any type information we could give her.

It appears from both Bennett and Williams' testimony that this information was relayed to Foxworth in the meeting with her.

I credit the testimony of Bennett and Williams with respect to the November conversation with employee Foxworth. I specifically discredit Foxworth's statement that she was told it would be in her best interest to keep her "mouth shut." I find in crediting the testimony of Williams and Bennett that they informed Foxworth she would not have to attend the meeting on the NLRB subpena, that it was strictly up to her, but they could not advise her what to do. When an employer informs an employee that the employee does not have to comply with a Board subpena or when it tells the employee that the employee is free to decide for herself whether or not to go to a Board hearing in response to the commands of a Board subpena, it engages in conduct which constitutes unlawful interference with Section 7 rights and as such violates Section 8(a)(1) of the Act. *Richard T. Furtney and Naomi P. Furtney, a Co-Partnership, d/b/a Mr. F's Beef and Bourbon*, 212 NLRB 462, 466 (1974); *Bob's Motors Incorporated*, 241 NLRB 1236 (1979); and *Winn-*

Dixie Stores, Inc. and Winn-Dixie Greenville, Inc., 128 NLRB 574, 578-579 (1960). Cf. *Rolligon Corporation*, 254 NLRB 22 (1981). Accordingly, I find that when Respondent through its supervisors and agents, Bennett and Williams, informed Foxworth that she did not have to comply with the Board subpena, that she was free to decide for herself whether or not to go, it violated Section 8(a)(1) of the Act.

The General Counsel in her amendment to the complaint in Case 10-CA-16016 alleged there was a violation of "the rule in *Johnnie's Poultry*." *Johnnie's Poultry Co.*, 146 NLRB 770 (1964), sets forth standards under which an employer may question employees in order to investigate issues raised in an unfair labor practice complaint and prepare for a hearing. In the usual situation the test of whether an employer's interrogation of an employee violates Section 8(a)(1) is whether under all the circumstances the interrogation reasonably tends to restrain or interfere with employees in the exercise of rights guaranteed them by the Act. Here, in the case before me, it is not a question of an employer preparing for a hearing, but rather an employee coming and requesting an explanation of the employee's right with respect to a Board subpena. I conclude the General Counsel's reliance on *Johnnie's Poultry Co., supra*, is misplaced and that no 8(a)(3) violation of the Act occurred as alleged by the General Counsel.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By coercively interrogating its employees concerning their union sentiments and activities; by threatening its employees with discharge if they joined or engaged in activities on behalf of the Union; by threatening its employees they would not be able to take grievances to their supervisors if they selected the Union as their collective-bargaining agent; by threatening employees it would close its plant if they joined or engaged in activities on behalf of the Union; by confiscating a petition being circulated among its employees by its employees which protested the discharge of one of its employees who supported the Union; by prohibiting access to the plant premises to its employees who engaged in protected concerted activities; by telling employees they do not have to honor Board subpenas; by promulgating, maintaining, and enforcing a rule prohibiting any union related solicitations and distributions by its employees on its property; by prohibiting its employees from soliciting their fellow employees during nonworking time to join or support the Union; and by prohibiting its employees from distributing union leaflets to their fellow employees during nonworking time in nonworking areas, Respondent violated Section 8(a)(1) of the Act.
4. By discharging employee Peggy Ruth Gardner on April 26, 1980, and thereafter failing and refusing to reinstate her because of her union and protected concerted activities, Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(3) and (1) of the Act.
5. By imposing more onerous working conditions on Clemenstine Hendley on or about April 9, 1980, and because of the imposition of the more onerous working conditions caused employee Clemenstine Hendley to take a leave of absence on or about April 9, 1980, because of her union and protected concerted activities, the Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(3) and (1) of the Act.
6. By changing the work assignment of employee Elijah Bailey III by removing him contrary to past practice from the position of substitute lead operator on or about April 9, 1980, because of his union and protected concerted activities, Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(3) and (1) of the Act.
7. The violations of the Act noted above constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
8. Respondent has engaged in no other unfair labor practices not specifically noted above.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I will recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As Respondent unlawfully discharged Peggy Ruth Gardner on April 26, 1980, I shall recommend that Respondent be ordered to offer her full and immediate reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings she may have suffered as a result of her discharge. As Respondent unlawfully placed more onerous working conditions on Clemenstine Hendley causing her to take a leave of absence commencing on or about April 9, 1980, I shall recommend that Respondent be ordered to offer Clemenstine Hendley full and immediate reinstatement to her former job on the reroll and/or burling section with the assistance, as was its past practice, of a doffer to aid her in placing rolls on the table, and, if that job no longer exists, to offer her a substantially equivalent job which she can perform, and make her whole for any loss of pay and other benefits she may have suffered without prejudice to her seniority or other rights and privileges. As Respondent unlawfully changed the work assignment of Elijah Bailey III by removing him, contrary to past practice, from the position of lead operator, I shall recom-

mend that Respondent be ordered to fill the position of lead operator in the department Elijah Bailey III worked on in a nondiscriminatory fashion, and make Elijah Bailey III whole for any loss of pay or other benefits he may have suffered as a result of not being permitted to serve in the position of lead operator. With respect to Bailey, I shall recommend that Respondent be ordered to pay the wage difference Bailey would have received had he been able to serve as substitute lead operator during the 6-week absence of lead operator Westbury. Backpay for the foregoing individuals and interest thereon shall be computed in the manner described in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). Further, it will be recommended that Respondent post the attached notice.

Upon the foregoing findings of fact, conclusions of law and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[29]

The Respondent, Amoco Fabrics Co., Patchogue-Plymouth Division/Nashville Mills, Nashville, Georgia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their union sentiments and activities.

(b) Threatening its employees with discharge if they join or engage in activities on behalf of the Amalgamated Clothing & Textile Workers Union, AFL–CIO, CLC, or any other labor organization.

(c) Threatening its employees they would not be able to take grievances to their supervisors if they selected the Amalgamated Clothing & Textile Workers Union, AFL–CIO, CLC, as their collective-bargaining representative.

(d) Telling employees they do not have to honor Board subpenas.

(e) Threatening its employees that it would close its plant if they joined or engaged in activities on behalf of the Union.

(f) Maintaining or enforcing any rule which prohibits employees from distributing literature in nonworking areas on nonworking time, where such distribution is protected by Section 7 of the Act.

(g) Maintaining any rule which prohibits employees from soliciting on nonworking time, where such solicitation is protected by Section 7 of the Act.

(h) Denying access to the plant premises to employees who are engaged in protected concerted activities.

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action to effectuate the policies of the Act:

(a) Offer Clemenstine Hendley immediate and full reinstatement to her former job with the assistance of a fellow employee in placing rolls upon the reroll table or in the burling job position or, if those positions no longer exist, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings she may have suffered as a result of our causing her to take a leave of absence, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Offer Peggy Ruth Gardner immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings she may have suffered as a result of her discharge in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Make whole Elijah Bailey III for any loss of earnings he may have suffered by reason of the unlawful action against him in the manner set forth in the section of this Decision entitled "The Remedy."

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records relevant and necessary to a determination of compliance with paragraphs (a), (b), and (c), above.

(e) Post at its Nashville, Georgia, place of business copies of the attached notice marked "Appendix."[30] Copies of said notice on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Decision, what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that those allegations in the complaints as to which no violations have been found are hereby dismissed.

[29] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided by Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions and Order, and all objections thereto shall be deemed waived for all purposes.

[30] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."